

**Volume I**  
**TRANSCRIPT OF RECORD**

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**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1961**

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**No. 439**

**UNITED STATES, APPELLANT,**

**vs.**

**THE BORDEN COMPANY, ET AL.**

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**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS**

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**FILED SEPTEMBER 22, 1961**  
**PROBABLE JURISDICTION NOTED DECEMBER 4, 1961**

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**IN UNITED STATES DISTRICT COURT, NORTHERN  
DISTRICT OF ILLINOIS, EASTERN DIVISION**

Civil Action No. 51 C 947

Equitable Relief Sought

UNITED STATES OF AMERICA, Plaintiff,

v.

THE BORDEN COMPANY; BOWMAN DAIRY COMPANY; AMERICAN PROCESSING AND SALES COMPANY; BELMONT DAIRY COMPANY; BELOIT DAIRY COMPANY; CAPITAL DAIRY COMPANY; HUNDING DAIRY COMPANY; MEADOWMOOR DAIRIES, INC.; RIDGEVIEW FARMS DAIRY, INC.; WESTERN UNITED DAIRY Co., Defendants

COMPLAINT—Filed June 18, 1951

The United States of America, by its attorneys, acting under the direction of the Attorney General, brings this complaint against the defendants named herein, and alleges as follows:

**I**

**Jurisdiction and Venue**

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act To protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, and under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended, entitled, "An Act To supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, against the defendants named herein in order to prevent and restrain continuing violations by them of Sections 1 and 2 of the Sherman Act and of Section 2(a) of the Clayton Act as amended.

[fol. 3] 2. All defendants transact business within the

Eastern Division of the Northern District of Illinois and are found therein.

## II

### Description of Defendants

3. The following corporations are hereby named defendants herein. Each is engaged in the business of purchasing, producing, distributing, and selling fluid milk to wholesale customers and other purchasers in the Chicago area and its vicinity.

- (a) The Borden Company is a corporation organized and existing under the laws of the State of New Jersey, with offices and principal place of business in New York, New York. It is hereinafter referred to as "Borden."
- (b) Bowman Dairy Company is a corporation organized and existing under the laws of the State of Illinois, with offices and principal place of business in Chicago, Illinois. It is hereinafter referred to as "Bowman."
- (c) Belmont Dairy Company is a corporation organized and existing under the laws of the State of Illinois, with offices and principal place of business in Chicago. It is a wholly owned subsidiary of Borden. It is hereinafter referred to as "Belmont."
- (d) Ridgeview Farms Dairy, Inc. is a corporation organized and existing under the laws of the State of Illinois, with offices and principal place of business in Chicago, Illinois. It is a wholly owned subsidiary of Bowman. It is hereinafter referred to as "Ridgeview."
- [fol. 4] (e) Beloit Dairy Company is a corporation organized and existing under the laws of the State of Illinois, with offices and principal place of business in Chicago, Illinois. It is hereinafter referred to as "Beloit."
- (f) Capitol Dairy Company is a corporation organized and existing under the laws of the State of Illinois, with offices and principal place of business in Chicago, Illinois. It is hereinafter referred to as "Capitol."

- (g) American Processing and Sales Company is a corporation organized and existing under the laws of the State of Illinois, with offices and principal place of business in Chicago, Illinois. Its name, prior to some time in 1943, was Hawthorn-Mellody Farms Dairy, Inc. It is hereinafter referred to as "Hawthorn."
- (h) Hunding Dairy Company is a corporation organized and existing under the laws of the State of Illinois, with offices and principal place of business in Chicago, Illinois. It is hereinafter referred to as "Hunding."
- (i) Meadowmoor Dairies, Inc. is a corporation organized and existing under the laws of the State of Illinois, with offices and principal place of business at Chicago, Illinois. It is hereinafter referred to as "Meadowmoor."
- (j) Western United Dairy Co. is a corporation organized and existing under the laws of the State of Illinois, with offices and principal place of business at Chicago, Illinois. It is hereinafter referred to as "Western United."

[fol. 5] 4. Wherever in this complaint it is alleged that any corporate defendant did any act or thing, such allegation shall be deemed to mean that such act was performed by the officers, agents, or employees of said corporate defendant.

### III

#### Definitions

5. As used in this complaint, the term "fluid milk" means cow's milk sold in fresh fluid form, whether as milk or as cream, or intermixtures thereof.

6. As used in this complaint, the term "distributor" means a person, firm, corporation, or cooperative engaged in the business of purchasing, pasteurizing, processing, bottling, and selling fluid milk.

7. As used in this complaint, the term "vendor" means a person, firm, or corporation engaged in the business of buying fluid milk from a distributor for resale to wholesale customers or others.

8. As used herein, the term "wholesale customers" means those customers for fluid milk who buy from a distributor or from a vendor for resale to consumers.

9. As used herein, the term "store wholesale customer" means a customer for fluid milk who buys from a distributor or from a vendor for resale to consumers for consumption off the premises of the store wholesale customer.

10. As used herein, the term "public institutions" means the following federal, county, and municipal institutions within the Chicago area and its vicinity.

#### Federal Institutions

The United States Marine Hospital, Chicago, Illinois;

The United States Veterans Administration Hospital, Hines, Illinois;

[fol. 6] The United States Navy installations at Great Lakes, Illinois and at Navy Pier, Chicago, Illinois, and at Navy Reserve Armory, Chicago, Illinois;

The United States Army installations at Fort Sheridan, Illinois, and at Vaughan General Hospital, Hines, Illinois, and the United States Army, Quartermaster Market Center, Chicago, Illinois;

#### County Institutions

The Cook County Jail, The Cook County Juvenile Detention Home, and The Cook County Hospital, all of Chicago, Illinois;

The Cook County Oak Forest Infirmary, Blue Island, Illinois;

#### Municipal Institutions

The Municipal Tuberculosis Sanitarium, Chicago, Illinois

11. As used in this complaint, the words "Chicago area" mean the territory lying within the corporate limits of the cities of Chicago and Evanston, and the territory lying within the corporate limits of the villages of Wilmette, Kenilworth, Winnetka, Glencoe, and Oak Park, all in the State of Illinois.

## IV

## Nature of Trade and Commerce and the position of the Defendants in the Industry

12. The Chicago area has a population of over 4,000,000 persons and is one of the largest milk consuming markets in the United States. Thus, in 1950, over a half billion quarts of fluid milk were distributed and sold in the Chicago area, with approximately 60 per cent of such fluid milk having been produced in the States of Wisconsin, Indiana, and Michigan, and the remainder being produced in Illinois.

13. The defendants ship into the Chicago area or purchase from others substantial quantities of fluid milk produced by dairy farmers located in Wisconsin, Michigan, and Indiana. This milk, in the course of a continuous flow [fol. 7] of interstate trade and commerce, passes through the bottling and pasteurizing plants of the defendants, is commingled with milk produced in Illinois, and is sold by the defendants to wholesale customers, public institutions, and others in the Chicago area. Approximately 60 per cent of the commingled fluid milk thus sold by the defendants come from dairy farmers located in States other than Illinois.

14. Fluid milk is by its nature perishable. It cannot be stored and must reach the consumer within a short time after production. Sales to consumers within the city of Chicago are required, by city ordinances, to be made within a limited number of hours after the milk is delivered by a dairy farmer to a receiving station. The purchase and receipt of said fluid milk in states other than Illinois, its transportation into the State of Illinois, its pasteurizing, processing, and bottling, and its sale and distribution to wholesale customers and public institutions in the Chicago area and its vicinity by distributors, including defendant distributors, has constituted, and does constitute, interstate trade and commerce in fluid milk between states other than Illinois and the State of Illinois.

15. Total wholesale and retail sales of fluid milk in the Chicago area in 1950 by all distributors were in excess of 148 million dollars. The defendants sold approximately 65 per cent of this total.



16. Total sales of fluid milk in 1950 by all distributors to wholesale customers and public institutions in the Chicago area were in excess of 80 million dollars, of which the defendant distributors sold in excess of 80 per cent of the total.

17. The dominant distributors of fluid milk to wholesale customers and public institutions in the Chicago area are defendants Bowman and Borden. The combined sales of Bowman, Borden, and their respective wholly owned subsidiaries, Ridgeview and Belmont, to said wholesale customers and public institutions amounted to more than 50 million dollars, or approximately 60 per cent of the total of such sales by all distributors in the Chicago area.

18. In 1950 Bowman had sales to wholesale customers and public institutions in the Chicago area of approximately 30 million dollars of fluid milk. In addition, Bowman's wholly-owned subsidiary Ridgeview had sales of fluid milk in 1950 of approximately \$1,900,000, of which almost all were to wholesale customers. The combined sales of Bowman and Ridgeview to wholesale customers and public institutions in 1950 amounted to approximately 38 per cent of the total of such sales by all distributors in the Chicago area.

19. In 1950 Borden had sales to wholesale customers and public institutions in the Chicago area of approximately 17 million dollars of fluid milk. In addition, Borden's wholly-owned subsidiary Belmont had sales in 1950 of fluid milk of approximately 900 thousand dollars, of which almost all were to wholesale customers. The combined sales of fluid milk by Borden and Belmont to wholesale customers and public institutions in 1950 amounted to approximately 22 per cent of the total of all such sales by all distributors in the Chicago area.

20. Defendants Beloit, Capitol, Hawthorn, Hunding, Meadowmoor, and Western United had combined sales to wholesale customers and public institutions in the Chicago area of approximately 18 million dollars in 1950, which amounted to approximately 23 per cent of the total of such sales by all distributors. The largest of the aforesaid defendants had sales to wholesale customers and public institutions in the Chicago area not in excess of 6 per cent of the total of such sales by all distributors.

21. There are, in addition to the ten defendants, approximately thirty other milk distributors in the Chicago [fol. 9] area whose combined sales of fluid milk to wholesale customers and public institutions were not in excess of 20 per cent of the total of such sales by all distributors. The largest of such non-defendant distributors had sales to wholesale customers not in excess of 5 per cent of the total of such sales by all distributors.

22. A significant factor in the growth of Bowman and Borden to their present dominant position in the distribution and sale of fluid milk in the Chicago area has been the policies followed by both companies in purchasing and absorbing the businesses and customer outlets of competitive distributors. During the period from January 1, 1928 to January 1, 1940, Bowman and Borden acquired by purchase approximately 44 distributors of fluid milk who had previously sold in competition with Bowman and Borden in the Chicago area.

23. Bowman acquired, during the 1928 to 1940 period, the following competing distributors for which it paid, in aggregate, approximately \$5,400,000:

| Date of Acquisition     | Name of Distributor           |
|-------------------------|-------------------------------|
| January 4, 1928         | Bolas Condensed Milk Co.      |
| February 3, 1928        | Ira J. Mix Dairy Co.          |
| March 30, 1928          | Frank P. Merkle Dairy Co.     |
| February 28, 1929       | Murphy-Ward Dairy Co.         |
| June 30, 1929           | Forest Glen National Milk Co. |
| July 2, 1929            | A. Johnson & Co.              |
| July 2, 1929            | John Wenzel                   |
| July 8, 1929            | George T. Sampson             |
| July 31, 1929           | Eich Dairy Co.                |
| October 1, 1930         | Herbert Oehlerking            |
| October 13, 1935        | Yore Bros. Dairy Co.          |
| February 2, 1936        | Averill Milk Products Co.     |
| [fol. 10] June 19, 1936 | Maple Brook Farms             |
| May 1, 1937             | Mohawk Dairy Co.              |
| February 11, 1938       | Natoma Farm                   |
| November 1, 1939        | Ratcliffe Bros. Creamery Co.  |

24. During the same 1928 to 1940 period, Borden acquired the following competing distributors for which it paid, in aggregate, approximately \$20,000,000, in cash or stock (market value) of Borden, or both:

| Date of Acquisition | Name of Distributor          |
|---------------------|------------------------------|
| 1928                | Koenig Dairy Co., Inc.       |
| 1928                | J. M. Barron & Sons          |
| 1928                | Wieland Dairy Co.            |
| 1928                | A. J. Olson Co.              |
| 1928                | Christiansen Bros. Dairy Co. |
| 1928                | Greenview Farm Dairy Co.     |
| 1928                | J. D. Broxham Dairy Co.      |
| 1928                | Clover Leaf Milk Co.         |
| 1929                | Des Plaines Dairy Co.        |
| 1929                | Galloway West Co.            |
| 1929                | Hammond Dairy Co.            |
| 1929                | Central Dairy Products Co.   |
| 1929                | Arlington Heights Dairy Co.  |
| 1929                | Borgen's Dairy Co.           |
| 1929                | Irving Park Dairy Co.        |
| 1929                | Logan Square Dairy Co.       |
| 1929                | Rascher Dairy Co.            |
| 1929                | Benson Dairy Co.             |
| 1929                | C. Carlsen Dairy Co.         |
| 1929                | Hohefelder Dairy Co.         |
| [fol. 11] 1929      | Winnetka Sanitary Dairy Co.  |
| 1930                | Curran & Fox Dairy Co.       |
| 1930                | Begel Bros. Dairy Co.        |
| 1930                | Rabe Dairy, Inc.             |
| 1931                | Marley Dairy, Inc.           |
| 1932                | Crown Dairy Products Co.     |
| 1936                | Swiss Dairy Co.              |
| 1937                | Park Manor Milk Products Co. |

25. As hereinafter more fully alleged in paragraphs 35 through 40, Bowman and Borden, during the period from January 1, 1940 to the date of the filing of this complaint, have continued to acquire the businesses and customer out-

lets of distributors who previously sold fluid milk in competition with Bowman and Borden.

## V

### Offenses Charged

#### A. Violations of Sections 1 and 2 of the Sherman Act

26. From about 1940 and continuing to the date of the filing of this complaint, the defendants have been and are now engaged in a combination and conspiracy to restrain and to monopolize, and have monopolized, the aforesaid interstate trade and commerce in the sale of fluid milk to wholesale customers and public institutions in the Chicago area, in violation of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2). The defendants are continuing, threatening to continue, and will continue the aforesaid offenses unless the relief hereinafter prayed for is granted.

27. The aforesaid combination and conspiracy has consisted of a continuing understanding and concert of action among the defendants, the substantial terms of which have been:

- (a) That each defendant refrain from competing for the fluid milk business of the wholesale customers of another defendant;
- [fol. 12] (b) That each defendant offer inducements such as discriminatory prices, rebates, discounts, lump sum cash payments, interest-free loans, or the furnishing of store equipment or other gratuities to wholesale customers of non-defendant distributors of fluid milk to cause said customers to discontinue their purchases of fluid milk from said non-defendant distributors and to purchase fluid milk from the defendant offering such inducement;
- (c) That each defendant induce its store wholesale customers to agree to maintain the retail prices "suggested" by the defendants;
- (d) That the defendants Bowman and Borden maintain and enhance their dominant market position by acquiring the businesses, including customer outlets, of competing distributors;

- (e) That defendants Bowman and Borden organize and operate "fighting companies" in order to suppress and destroy the competition of non-defendant distributors;
- (f) That the defendants collusively allocate and share among themselves the business of selling fluid milk to public institutions;
- (g) That the defendants agree upon, fix, and maintain prices for the sale of fluid milk to public institutions by submitting prearranged, bogus, and collusive bids for the sale of fluid milk to such institutions.

28. During the period of time covered by this complaint and for the purpose of monopolizing and of forming and [fol. 13] executing the aforesaid combination and conspiracy to restrain and monopolize the said interstate trade and commerce, the defendants, by common understanding and concert of action, have done, among others, the following acts and things:

#### Allocation of Wholesale Customers

29. During the period of time covered by this conspiracy, defendants Bowman, Borden, Ridgeview, Belmont, Beloit, Capitol, Hunting, Meadowmoor, and Western United have, by agreement and understanding among themselves, refrained from competing for the fluid milk business of each other's wholesale customers. During 1940 and 1941, Hawthorn was not a party to such agreement and understanding but engaged in active solicitation of the fluid milk business of the wholesale customers served by the other defendant distributors. Bowman, Ridgeview, and others of the defendants retaliated against Hawthorn by a concentrated and selective solicitation aimed at the wholesale customers served by Hawthorn and offered such customers fluid milk at preferential and "cut" prices. As a result of such "price war," Hawthorn's fluid milk business was rendered unprofitable and Hawthorn was forced to enter into negotiations with Bowman and the other defendants to obtain a termination of hostilities. Such negotiations resulted in Hawthorn's becoming a participant in the combination and

conspiracy. Hawthorn agreed to refrain from attempting to secure the fluid milk business of wholesale customers served by one or more of the defendant distributors, and in return, the other defendants agreed to refrain from attempting to secure the fluid milk business of wholesale customers served by Hawthorn.

### "Stop Buying"

30. The defendants have concertedly engaged in the practice known in the industry of "stop buying." In doing this, the defendants, by agreement and understanding among themselves, have solicited the fluid milk business [fol. 14] of wholesale customers of non-defendant distributors with offers of various secret inducements involving discriminatory prices, rebates, discounts, interest-free loans, free store equipment, and substantial lump sum cash payments and other gratuities. These discriminatory and preferential inducements have been given on the condition that the wholesale customer agree to purchase his requirements of fluid milk exclusively from the defendant offering the inducement and refrain from purchasing fluid milk from any distributor other than said defendant and, in respect to store wholesale customers, on the further understanding that the store wholesale customer agree not to reduce his prices to consumers below those store prices which all of the defendants "suggest" to their store wholesale customers. The defendants have policed the operations of their store wholesale customers to detect any sales of milk to consumers at prices below those suggested by the defendants.

31. A variation of the stop buying practice exists with reference to so-called "split stops," i.e., those wholesale customers who follow the practice of purchasing their fluid milk requirements from more than one distributor. Where one of the distributors is a defendant and the other is a non-defendant, other defendants have limited their stop buying activities to that portion of the business handled by the non-defendant and have not attempted to secure the remaining portion of the business handled by a defendant.

32. The defendants Bowman and Borden have utilized

secret codes to record the lump sum cash payments made in connection with their stop buying activities and have systematically destroyed other records which would disclose the identities of wholesale customers receiving cash payments and the amounts paid to such customers.

33. The defendants have implemented their understanding not to compete for each other's wholesale customers by adoption of rules, instructions, and practices governing solicitation of wholesale customers by defendants' respective contact men or solicitors. Defendants have instructed [fol. 15] and ordered their respective solicitors not to solicit the wholesale customers of another defendant. In respect to store wholesale customers, defendants have instructed their respective solicitors that when such a customer of one of the defendants has ceased doing business and has reopened within 30 days under either new or old management and the store fixtures have not been removed from the premises, none of the defendants, except the defendant previously selling the customer, may attempt to secure the patronage of said customer. Pursuant to the aforementioned instructions, solicitors of the defendants have refrained from soliciting wholesale customers of another defendant and have declined to serve such customers, inventing various fictitious and untrue excuses for declining such business.

34. Defendants have arranged a system of trading the business of dissatisfied wholesale customers where the defendant formerly supplying such customer has been unable to retain the customer's patronage. Such trading has been arranged by the defendants to prevent such customers from giving their patronage to non-defendant distributors.

#### Bowman and Borden Acquisitions

35. As part of the conspiracy to allocate among themselves wholesale milk customers in the Chicago area, the defendants have recognized each defendant's right to acquire and retain the exclusive patronage of the customers of a distributor whose business has been purchased by one of the defendants.

36. Assisted by this understanding, Bowman has acquired, since January 1, 1940, by purchase, the business,



physical assets, and customer outlets of the following competing distributors operating in the Chicago area and its vicinity:

| Date of Acquisition    | Name of Distributor                               |
|------------------------|---|
| July 10, 1940          | Honey Hill Creamery Co.<br>(retail business only) |
| October 13, 1941       | Westbrook Farms Dairy,<br>Inc.                    |
| April 1, 1942          | Austin Dairy                                      |
| [fol. 16] July 1, 1942 | Harding Bros. and Williams                        |
| December 27, 1942      | Sefcik Dairy Co.                                  |
| June, 7, 1943          | Royal Dairy Company                               |
| June 10, 1943          | Wencel's Dairy Products                           |
| October 1, 1943        | Clearing Dairy Company                            |
| December 23, 1943      | Reiter Dairy                                      |
| June 30, 1944          | Nieman Dairy                                      |
| July 19, 1944          | Lemont Dairy                                      |
| December 28, 1945      | Algrim Dairy                                      |
| June 1, 1946           | Round Lake Creamery Co.                           |
| June 30, 1946          | Voss Dairy Co.                                    |
| December 8, 1946       | Capitol Dairy Company<br>(retail business only)   |
| January 3, 1947        | M. G. Rudzinski                                   |

37. Assisted by the aforesaid understanding, Borden has acquired, since January 1, 1940, by purchase, the business, physical assets, and customer outlets of the following competing distributors operating in the Chicago area and its vicinity:

| Date of Acquisition | Name of Distributor                      |
|---------------------|--|
| April 20, 1940      | Belmont Farm Products, Inc.              |
| September 25, 1940  | C. W. Spivey                             |
| June 14, 1941       | Sunderman Farm & Dairy<br>Products, Inc. |
| 1942                | Modern Dairy                             |
| March 16, 1943      | La Grange Dairy                          |
| August 1, 1943      | Mandel Bros. Dairy                       |
| August 15, 1943     | Cornell Dairy                            |
| December 28, 1943   | Marquette Dairy Company,<br>Inc.         |



| Date of Acquisition        | Name of Distributor         |
|----------------------------|-----------------------------|
| December 30, 1943          | Pure Dairy Products Company |
| February 1, 1944           | P. F. Demarais Dairy        |
| February 16, 1944          | A. Demarais & Son           |
| October 27, 1944           | Bruce Dairy                 |
| February 1, 1945           | Snow White Dairy Company    |
| [fol. 17] December 1, 1945 | City Sanitary Milk Company  |
| March 1, 1946              | Forest Glen Dairy Company   |
| April 16, 1947             | Devine's Dairy              |

38. In a number of the said acquisitions, the defendant acquiring the distributor, by the contract of purchase, has conditioned payment for the business and assets of said distributor upon the retention by the defendant of the existing volume of milk sales of the purchased distributor. The purposes of defendants Bowman and Borden in making such acquisitions were, in many instances, to obtain the seller's share of the Chicago area fluid milk market and to eliminate distributors whose price cutting policies threatened the defendants' scheme of customer allocation and price stabilization. The purchase price paid by either defendant Bowman or defendant Borden in the acquisition of a distributor was, in many cases, influenced by the extent to which the distributor offered price competition or threatened the defendants' customer allocations.

39. In making acquisitions of distributors, defendants Bowman and Borden regularly have required the seller to execute a covenant not to engage in the fluid milk business in competition with the defendant purchaser. In addition, for the purpose of assuring the transfer and retention of the customers formerly served by the acquired distributor, defendants Bowman and Borden, in a number of instances, have provided in the terms of purchase for the employment by the purchaser of the manager or owner of the seller.

40. A number of the distributors so acquired by defendants Bowman and Borden were companies whose customers were principally vendors. In such acquisitions, the other defendants recognized the right of the defendant purchaser to supply exclusively such vendors.

### The Operation of "Fighting" Companies

41. Bowman and Borden have each organized and operated a "fighting company" in order to suppress and destroy the competition of non-defendant distributors.

[fol. 18] 42. In or about November 1939, Bowman purchased the business of a distributor known as Ratcliffe Bros. Creamery Co. and in February or March 1940 transferred the assets of said company to its newly organized subsidiary, defendant Ridgeview Farms Dairy, Inc. Bowman concealed its ownership of Ridgeview from other milk distributors with the exception of other defendant distributors who were given assurances that Ridgeview would not be permitted to compete with them. Pursuant to the directions of Bowman, Ridgeview has embarked on predatory price cutting and stop buying for the purpose of injuring or destroying non-defendant distributors who sold fluid milk at reduced prices in multi-quart containers or who solicited the patronage of Bowman customers.

43. Borden organized, in or about April 1940, its wholly-owned subsidiary, defendant Belmont Dairy Company. Borden concealed its ownership of Belmont from other milk distributors with the exception of other defendant distributors who were given assurances that Belmont would not be permitted to compete with them. Pursuant to the directions of Borden, Belmont has embarked on predatory price cutting and stop buying for the purpose of injuring or destroying independent distributors who sold fluid milk at reduced prices in multi-quart containers or who solicited the patronage of Borden customers.

### Collusive Bids to Public Institutions

44. The defendants have allocated or attempted to allocate among themselves the sales of fluid milk to public institutions in the Chicago area and its vicinity by means of a scheme involving the use of prearranged, bogus and collusive bids. The defendants have submitted such bids in making sales of fluid milk to the following institutions: Chicago Municipal Tuberculosis Sanitarium, the Cook County Jail, the Cook County Juvenile Detention Home, and the Cook County Hospital, all in Chicago, Illinois, to the Cook County Oak Forest Infirmary, Blue Island,

[fol. 19] Illinois, to the United States Marine Hospital, Chicago, Illinois, to the United States Veterans Administration Hospital, Hines, Illinois, to the United States Navy for delivery to the Naval Hospital, Great Lakes, Illinois, for delivery at the Naval Training Station, Great Lakes, Illinois, for delivery at the Naval Training School, Navy Pier, Chicago, Illinois (until the closing of that installation in 1946), and for delivery at Navy Training School, Naval Reserve Armory, Chicago, Illinois, and to the United States Army for delivery at Ft. Sheridan, Ft. Sheridan, Illinois, and for delivery at Vaughan General Hospital, Hines, Illinois (prior to the time such hospital was merged with the United States Veterans Administration Hospital at Hines, Illinois), and to the United States Army for delivery during the years 1943 and 1944 to various Army and Navy Camps and installations located in the Southern section of the United States whose purchases of fluid milk were made through the United States Army, Quartermaster Market Center, Chicago, Illinois.

#### Reprisals

45. In order to discourage and prevent other distributors of fluid milk from disrupting the prearranged allocation of the aforementioned institutional business, the defendants have threatened reprisals and have engaged in reprisals against distributors who have submitted bids to one or more of the above-mentioned public institutions. Such reprisals have usually taken the form of an intensified stop buying program directed at the wholesale customers of the interloping distributors.

#### B. Violations of Section 2(a) of the Clayton Act as Amended

46. Beginning in or about January 1941, and continuing up to the date of the filing of this complaint, each of the defendants has sold and is continuing to sell for resale fluid milk in interstate trade and commerce to different wholesale purchasers in the Chicago area at prices which discriminate between said purchasers of fluid milk of like grade and quality, and the effect of such discrimination [fol. 20] may have been and may continue to be to substantially lessen competition or tend to create a monopoly

in the sale of fluid milk to wholesale purchasers in the Chicago area or to injure, destroy or prevent competition between the aforesaid wholesale purchasers knowingly receiving the benefit of such price discriminations and other wholesale customers not receiving the benefit of such discriminations, in violation of Section 2(a) of the Clayton Act, as amended (38 Stat. 730, 49 Stat. 1526, 15 U.S.C. Sec. 13(a)). The defendants are continuing, threatening to continue, and will continue the aforesaid offenses unless the relief hereinafter prayed for is granted.

47. The aforesaid discriminations in price have been granted, often secretly, in the form of preferential prices, discounts, rebates, lump sum cash payments, installment cash sums, and interest-free loans.

## VI

### Effects of the Monopolization and the Combination and Conspiracy

48. The combination and conspiracy to restrain and to monopolize, and the monopolization of, interstate trade and commerce in the distribution and sale of fluid milk has had the following effects:

- (a) The defendants Borden and Bowman have achieved and maintained effective monopoly control over the distribution and sale of fluid milk to wholesale customers and public institutions in the Chicago area by inducing the other defendants to participate in and maintain the collusive allocation of wholesale customers and public institutions, by organizing and operating "fighting" companies, by eliminating competition through stop buying, by allocating wholesale customers and public institutions and by absorbing competing distributors;
- (b) Competing non-defendant distributors have been eliminated from the business of distributing and selling fluid milk to wholesale customers and public institutions;
- [fol. 21] (c) Non-defendant distributors have been intimidated by the defendants' predatory acts and

practices from competing for the business of selling fluid milk to wholesale purchasers and public institutions;

- (d) Competition in the distribution and sale of fluid milk to wholesale customers and public institutions has been restrained and suppressed;
- (e) The business of selling fluid milk to public institutions has been allocated among the defendants and said public institutions have been deprived of the benefits of competitive bidding.

[fol. 22]

#### Prayer

Wherefore, plaintiff prays:

1. That the combination and conspiracy to restrain and to monopolize the interstate trade and commerce, hereinabove alleged, be adjudged and decreed to be in violation of Sections 1 and 2 of the Sherman Act.

2. That the defendants be adjudged and decreed to have monopolized the interstate trade and commerce, hereinabove alleged, in violation of Section 2 of the Sherman Act.

3. That the discriminations in price for fluid milk of like grade and quality, which each of the defendants has granted to certain of its wholesale customers and not to other of its wholesale customers, be adjudged and decreed to be in violation of Section 2(a) of the Clayton Act, as amended.

4. That the defendants, individually and collectively, be perpetually enjoined and restrained from continuing the aforesaid discriminations and from carrying out, directly or indirectly, the combination and conspiracy to restrain and to monopolize, and the monopolization of trade and commerce, as hereinbefore alleged, or any similar discrimination, or any combination or conspiracy having a similar purpose or effect.

5. That the defendant Borden be required to dispose of its entire interest in defendant Belmont to parties who are not named as defendants in this case, and who are not owned or controlled by, or affiliated with, any defendant herein or the successor of any defendant.

6. That the Court require defendant Borden to submit

a plan for the divestiture of such of its plants, facilities and other assets, used by the Chicago Milk Division of defendant Borden, as is necessary to restore effective competition in the distribution and sale of fluid milk to wholesale customers and public institutions in the Chicago area.

[fol. 23] 7. That the defendant Bowman be required to dispose of its entire interest in defendant Ridgeview to parties who are not named as defendants in this case, and who are not owned or controlled by, or affiliated with, any defendant herein or the successor of any defendant.

8. That the Court require defendant Bowman to submit a plan for the divestiture of such of its plants, facilities and other assets, used by defendant Bowman, as is necessary to restore effective competition in the distribution and sale of fluid milk to wholesale customers and public institutions in the Chicago area.

9. That the agreements, understandings, arrangements and practices of the defendants, hereinabove alleged, be ordered terminated and cancelled and each of the defendants be perpetually enjoined from entering into or participating in any agreement or plan to do or cause to be done any of the acts and practices herein alleged to have been agreed upon and done by defendants in furtherance of the aforesaid combination and conspiracy.

10. That defendants, jointly and severally, be perpetually enjoined from, in any manner, offering or giving to any existing or prospective wholesale customer any preferential or discriminatory price, discount, rebate, lump sum cash payment, installment cash sum, interest free loan or other gratuity.

11. That each of the defendants be required to submit, as part of any bid for the sale of fluid milk to any public institution or any other institution purchasing fluid milk by means of competitive bids, an affidavit of the officer or agent signing the bid on behalf of the defendant certifying that such bid has been compiled and submitted without consultation, agreement, understanding or collusion on the part of the defendant with any other distributor of fluid milk.

[fol. 24] 12. That the plaintiff have such other further,



general and different relief as the nature of the case may require and as the Court may deem proper in the premises.

13. That the plaintiff recover its taxable costs.

/s/ J. Howard McGrath, Attorney General. /s/ H. G. Morison, Assistant Attorney General. /s/ Otto Kerner, Jr., United States Attorney.

/s/ Willis L. Hotchkiss, /s/ E. Houston Harsha, /s/ Paul V. Ford, /s/ Harry H. Faris, /s/ James E. Mann, /s/ Dorothy M. Hunt, /s/ Charles W. Houchins, Attorneys for the United States, Suite 820, 208 S. LaSalle Street, Chicago 4, Illinois, Central 6-6886.

[fol. 24a] [File endorsement omitted]

[fols. 25-28] IN UNITED STATES DISTRICT COURT, NORTHERN  
DISTRICT OF ILLINOIS, EASTERN DIVISION

[Title omitted]

ANSWER OF THE BORDEN COMPANY TO COMPLAINT—Filed  
September 19, 1952

Now comes the defendant, The Borden Company (hereinafter referred to as "Borden"), and answers the Complaint as follows:

1. Borden denies that it is violating or has been violating Sections 1 or 2 of the Sherman Act or Section 2(a) of the Clayton Act, as amended.

. . . . .

[fol. 29] 50. Borden alleges that the larger quantity discounts which it granted to certain customers were based on cost savings, resulting from the different methods or quantities in which it sold or delivered milk and cream to said customers, as compared to its other customers, within the meaning of the first proviso of Section 2(a) of the Clayton Act, as amended.

51. Borden alleges that the larger quantity discounts which it granted to certain customers were made in good faith to meet equally low prices of a competitor or competitors or the services or facilities furnished by a competitor or competitors, within the meaning of the proviso of Section 2(b) of the Clayton Act, as amended.

. . . . .

[fol. 30] Howard Neitzert, /s./ Edwin Clark Davis,  
/s./ Walter J. Cummings, Jr., /s./ Joseph A.  
Greaves, Attorneys for Defendant, The Borden  
Company.

Sidley, Austin, Burgess & Smith, of Counsel.

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[fol. 31] IN UNITED STATES DISTRICT COURT, NORTHERN  
DISTRICT OF ILLINOIS, EASTERN DIVISION

[Title omitted]

ANSWER OF BOWMAN DAIRY COMPANY TO COMPLAINT—Filed  
September 19, 1952

Now comes the defendant, Bowman Dairy Company (hereinafter referred to as "Bowman"), and in answer to the Complaint heretofore filed in the above entitled action, says:

1. Bowman denies that it is violating or has been violating Sections 1 or 2 of the Sherman Act or Section 2(a) of the Clayton Act, as amended.

2. Bowman admits that it transacts business within the Eastern Division of the Northern District of Illinois, but Bowman is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 2 of the Complaint.

3. Bowman admits that its corporate name is "Bowman Dairy Company"; that its State of incorporation is Illinois;



that its principal place of business is Chicago, Illinois; and that it is engaged in the business of purchasing, processing, distributing and selling fluid milk in the City of Chicago and certain suburbs thereof. Bowman admits that Ridgeview Farms Dairy, Inc., is a corporation organized and existing under the laws of the State of Illinois with offices and principal place of business in Chicago, Illinois, and that it is a wholly owned subsidiary of Bowman. Bowman is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 3 of the Complaint.

[fol. 32] 4. Bowman is without sufficient knowledge to form a belief as to the truth or veracity of the allegations contained in Paragraph 4 of the Complaint and requests strict proof thereof.

5. thru 11. Since Paragraphs 5 thru 11 of the Complaint contain plaintiff's definitions of the terms and phrases used in the Complaint, Bowman makes no answers to said paragraphs.

12. Bowman admits that the Chicago area, as defined in Paragraph 11 of the Complaint, has a population of over 4,000,000 persons and is one of the large milk consuming markets in the United States. Bowman is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 12.

13. Bowman admits that it purchases fluid milk in Wisconsin and Indiana and ships it into Illinois. Bowman alleges that it commingles this Wisconsin and Indiana fluid milk with Illinois milk in the Chicago area before it is pasteurized, standardized, packaged and sold. Bowman alleges that approximately one-half of the commingled milk originates in Wisconsin and Indiana, and that the Wisconsin and Indiana milk is not purchased to fill prior orders of its customers. Bowman is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 13.

14. Bowman denies each and every allegation of Paragraph 14.

15. thru 17. Bowman is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 15, 16 and 17, but Bowman denies that it is a "dominant" distributor of fluid milk to wholesale

customers and public institutions in the Chicago area, as alleged in Paragraph 17.

18. Bowman denies that its 1950 sales of fluid milk to wholesale customers and public institutions in the Chicago area approximated \$30,000,000.00. Bowman admits that Bowman's wholly owned subsidiary had sales of fluid milk in 1950 of approximately \$1,900,000.00, which were largely to wholesale customers. Bowman is without knowledge or [fol. 33] information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 18.

19. thru 21. Bowman is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 19, 20 and 21.

22. Bowman admits that it has purchased certain Chicago area distributors. Bowman denies that it occupies a dominant position in the distribution and sale of fluid milk in the Chicago area. Bowman is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 22.

23. Bowman admits that from 1928 to 1939 it acquired the stock or assets of the distributors listed in Paragraph 23, but denies that it paid \$5,400,000.00 therefor.

24. Bowman is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24.

25. For its answer to Paragraph 25 of the Complaint, Bowman refers to Paragraphs 35 through 40 of this Answer.

26. thru 35. Bowman denies each and every allegation of Paragraphs 26 through 35 insofar as they apply to Bowman. Bowman is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of said paragraphs.

36. Bowman admits that it has purchased the stock or assets of the distributors listed in Paragraph 36, but denies each and every other allegation of Paragraph 36.

37. Bowman is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 37.

38. Bowman denies each and every allegation of Paragraph 38 insofar as they apply to Bowman. Bowman is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 38.

[fol. 34] 39. Bowman admits that when it has acquired the stock or assets of distributors, it has sometimes obtained from the seller a covenant not to compete and has sometimes employed the manager or owner of the seller. Bowman denies each and every other allegation of Paragraph 39 insofar as they apply to Bowman. Bowman is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 39.

40. Bowman admits that some of the distributors whose stock or assets is acquired were companies whose customers were principally vendors. Bowman denies each and every other allegations of Paragraph 40 insofar as they apply to Bowman. Bowman is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 40.

41. Bowman denies each and every allegation of Paragraph 41 insofar as they apply to Bowman. Bowman is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 41.

42. Bowman admits that it purchased Ratcliffe Bros. Creamery Co. in 1940, and that Ridgeview Farms Dairy, Inc. is a wholly owned subsidiary of Bowman. Bowman denies each and every other allegation of Paragraph 42.

43. Bowman is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 43.

44. thru 48. Bowman denies each and every allegation of Paragraphs 44 through 48 insofar as they apply to Bowman. Bowman is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of said paragraphs.

49. Bowman alleges that its acts and omissions referred to in the Complaint were reasonable business practices and were not in violation of or prohibited by any act or law referred to in the Complaint.

[fol. 35] 50. Bowman alleges that the larger quantity discounts which it granted to certain customers were based on cost savings, resulting from the different methods or quantities in which it sold or delivered milk and cream to said customers, as compared to its other customers, within the meaning of the first proviso of Section 2(a) of the Clayton Act, as amended.

51. Bowman alleges that the larger quantity discounts which it granted to certain customers were made in good faith to meet equally low prices of a competitor or competitors or the services or facilities furnished by a competitor or competitors, within the meaning of the proviso of Section 2(b) of the Clayton Act, as amended.

52. Bowman alleges that the plaintiff did not commence this action for an injunction and other equitable relief until June 18, 1951, and therefore has been guilty of such laches as ought to and does bar this action.

53. The Complaint fails to state a claim against Bowman upon which relief can be granted.

L. Edward Hart, Jr., Leo F. Tierney, Charles O. Parker, Attorneys for the defendant, Bowman Dairy Company.

Montgomery, Hart, Pritchard & Herriott Mayer, Meyer, Austrian & Platt, Of Counsel.

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[fols. 35a-178] [File endorsement omitted]

[fol. 179] SUPREME COURT OF THE UNITED STATES—OCTOBER  
TERM, 1953.

No. 464

UNITED STATES OF AMERICA, Appellant

v.

THE BORDEN COMPANY, et al.

On Appeal From the United States District Court for  
the Northern District of Illinois.

OPINION, MAY 17, 1954—Filed in District Court June 23,  
1954

Mr. Justice Clark delivered the opinion of the Court.

The United States instituted this civil proceeding against ten Chicago dairies,<sup>1</sup> charging conspiracy to restrain and monopolize the sale of fluid milk to wholesale customers and others in the Chicago area, in violation of the Sherman Act, and price discrimination, in violation of the Clayton Act. Prior to trial a consent decree was entered against five of the smaller defendant companies, enjoining continuation of the conduct charged in the complaint. At the close of the Government's case against the remaining five defendants,<sup>2</sup> the District Court dismissed the complaint in its entirety. It held that, as to the alleged violations of §§ 1 and 2 of the Sherman Act, the evidence failed to establish the existence of a conspiracy or combination; and that, though there was proof of price discrimination violative of § 2(a) of the Clayton Act by four of the defendants,<sup>3</sup> a prior decree in a private antitrust action brought by a competitor dairy company

<sup>1</sup> The Borden Company, Bowman Dairy Company, Belmont Dairy Company, Ridgeview Farms Dairy, Beloit Dairy Company, Capitol Dairy Company, American Processing and Sales Company, Hunding Dairy Company, Meadowmoor Dairies and Western United Dairy Company.

<sup>2</sup> Borden, Bowman, Belmont, Ridgeview and Beloit.

<sup>3</sup> Borden, Bowman, Belmont and Ridgeview.

enjoined the conduct in question and made it "useless" to award the Government an injunction. The Government [fol. 180] then appealed directly to this Court under 15 U. S. C. § 29, and we noted probable jurisdiction, 346 U.S. 914.

Three of the four questions presented on this appeal deal with rulings by the district judge that certain evidence was inadmissible.<sup>4</sup> The Government does not challenge the court's conclusion that on the record conspiracy was not shown, but it insists that error in these rulings precluded establishment of the conspiracy. After hearing argument and considering as much of the record as is before us, including the Government's offers of proof, we are of the opinion that, even assuming error in each of the challenged rulings, it does not appear that admission of the evidence in question would have been sufficient to change the conclusion that the Government had not established a case under the Sherman Act; hence the rulings cannot be said to have affected substantial rights of the parties within the meaning of 28 U. S. C. § 2111.<sup>5</sup>

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<sup>4</sup> The trial court refused to allow the Government to use for impeachment of a hostile witness a deposition taken in another case; to introduce in evidence certain tape recordings made for use in the prior case; and to introduce testimony as to a conversation with a deceased agent of one of the defendants.

<sup>5</sup> "On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties."

Fed. Rules Civ. Proc., 61: "Harmless Error. No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."

Since on this basis we affirm the judgment of dismissal [fol. 181] as to the Sherman Act allegations, it is unnecessary to discuss the propriety or impropriety of the several rulings.

The fourth question challenges the basis of the District Court's refusal to grant the Government injunctive relief against price discrimination by four of the defendants.<sup>6</sup> The district judge found that Government evidence tended to prove that these defendant companies have sold at prices which discriminate between purchasers of milk of like grade and quality. This, he said, would give defendants the burden of establishing that the discriminations fall within statutory exceptions, were it not that under a consent decree entered against defendants in a private suit in 1952 by another judge of the same court,<sup>7</sup> they already are enjoined from performing all acts specified by the Government in its prayer for relief. In the opinion of the district judge.

"A decree of this court entered at the instance of a private litigant is as binding upon a defendant as a decree entered at the instance of the Government; and a consent decree, entered by any judge of this court without hearing evidence, is as binding as a decree entered by another judge after a protracted trial. I conclude, therefore, that each of the remaining defendants is now effectively enjoined by this court from performing any of the acts set forth in the Government's prayer for injunctive relief, insofar as the Clayton Act is concerned.

"As a court of equity, I will not perform a useless task. The violations of the Clayton Act described in the complaint and shown at the trial are, for the [fol. 182] most part, old violations. And to this court, the Dean decree assures, as completely as any decree can assure, that there will be no new violations."

<sup>6</sup> See note 3, *supra*. Since the Government does not question the correctness of the judgment of dismissal of its claim under § 2(a) of the Clayton Act against Beloit, the fifth defendant, it is not before us.

<sup>7</sup> *Dean Milk Co. v. American Processing & Sales Co.*, U. S. D. C. N. D. Ill. E. D., No. 49 C 1159, Dec. 3, 1952.



Accordingly the court dismissed that part of the complaint which alleged violations of § 2(a) of the Clayton Act. Thus it appears that the Government was refused an injunction solely because of the existence of the prior decree entered against defendants in the course of a private action. We think that refusal on this basis constituted an abuse of discretion.

Section 15 of the Clayton Act, 15 U. S. C. § 25, charges the United States district attorneys, under supervision of the Attorney General, with the duty of instituting equity proceedings to prevent and restrain violation of certain of the antitrust laws, including price discrimination. Under § 16 of the Act, 15 U. S. C. § 26, a private plaintiff may obtain injunctive relief against such violations only on a showing of "threatened loss or damage"; and this must be of a sort personal to the plaintiff, *Beegle v. Thomson*, 138 F. 2d 875, 881 (1943). The private-injunction action, like the treble-damage action under § 4 of the Act, supplements Government enforcement of the antitrust laws; but it is the Attorney General and the United States district attorneys who are primarily charged by Congress with the duty of protecting the public interest under these laws. The Government seeks its injunctive remedies on behalf of the general public; the private plaintiff, though his remedy is made available pursuant to public policy as determined by Congress, may be expected to exercise it only when his personal interest will be served. These private and public actions were designed to be cumulative, not mutually exclusive. S. Rep. No. 698, 63d Cong., 2d Sess. 42; cf. *Federal Trade Comm'n v. Cement Institute*, 333 U. S. 683, 694-695 (1948). ". . . [T]he scheme of the statute is sharply [fol. 183] to distinguish between Government suits, either criminal or civil, and private suits for injunctive relief or for treble damages. Different policy considerations govern each of these. They may proceed simultaneously or in disregard of each other." *United States v. Bendix Home Appliances*, 10 F. R. D. 73, 77 (S. D. N. Y. 1949). In short, the Government's right and duty to seek an injunction to protect the public interest exist without regard to any private suit or decree.

To hold that a private decree renders unnecessary an



injunction to which the Government is otherwise entitled is to ignore the prime object of civil decrees secured by the Government—the continuing protection of the public, by means of contempt proceedings, against a recurrence of antitrust violations. Should a private decree be violated, the Government would have no right to bring contempt proceedings to enforce compliance; it might succeed in intervening in the private action but only at the court's discretion. The private plaintiff might find it to his advantage to refrain from seeking enforcement of a violated decree; for example, where the defendant's violation operated primarily against plaintiff's competitors. Or the plaintiff might agree to modification of the decree, again looking only to his own interest. In any of these events it is likely that the public interest would not be adequately protected by the mere existence of the private decree. It is also clear that Congress did not intend that the efforts of a private litigant should supersede the duties of the Department of Justice in policing an industry. Yet the effect of the decision below is to place on a private litigant the burden of policing a major part of the milk industry in Chicago, a task beyond its ability, even assuming it to be consistently so inclined.

We agree with appellees that the statute confers on the Government no absolute right to an injunction upon [fol. 184] a showing of past violation of the antitrust laws by defendants. As we said in *United States v. W. T. Grant Co.*, 345 U. S. 629, 633 (1953):

“... the moving party must satisfy the court that relief is needed. The necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive. The chancellor's decision is based on all the circumstances; his discretion is necessarily broad and a strong showing of abuse must be made to reverse it.”

The Government contends that it has “an independent right to relief against violations of the Clayton Act, without regard to whether such violations previously have been enjoined by a decree in a private antitrust suit.”

But we cannot say that the existence of the private decree warrants *no* consideration by the chancellor in assessing the likelihood of recurring illegal activity. We hold only that in view of the difference in the respective interests, sought to be vindicated by the Government and the private litigant, the district judge abused his discretion in refusing the Government an injunction solely because of the existence of the private decree.

The judgment of dismissal as to the Sherman Act allegations is affirmed; as to the Clayton Act allegations the case is remanded to the District Court for further consideration, and such further proceedings as may be necessary, in accordance with this opinion.

Mr. Justice Black and Mr. Justice Jackson took no part in the consideration or decision of this case.

[fol. 185] IN THE SUPREME COURT OF THE UNITED STATES

MANDATE—Filed in District Court June 23, 1954

United States of America, ss:

The President of the United States of America,

To the Honorable the Judges of the United States District Court for the Northern District of Illinois.

Greeting:

Whereas, lately in the United States District Court for the Northern District of Illinois, before you, or some of you, in a cause between United States of America, Plaintiff, and The Borden Company et al., Defendants, No. 51 C 947, wherein the judgment of the said District Court dismissing the complaint was duly entered in said cause on the 17th day of June, A.D. 1953;

[fol. 186] as by the inspection of the transcript of the record of the said District court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress; in such case made and provided, fully and at large appears. And [fol. 187] whereas, in the present term of October, in

the year of our Lord one thousand nine hundred and fifty-three, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel:

On consideration whereof, It is ordered and adjudged by this Court as follows: The judgement of the District Court dismissing the complaint as to the Sherman Act allegations is affirmed. That part of the judgment dismissing the complaint as to alleged violations of Sec. 2(a) of the Clayton Act is reversed, except as to the Beloit Dairy Company. The case is remanded to the District Court for further consideration, and such further proceedings as may be necessary, in accordance with the opinion of this Court.

May 17, 1954.

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[fol. 188] You, therefore, are hereby commanded that such further consideration be had, and such further proceedings as may be necessary, in accordance with the opinion and judgment of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness, the Honorable Earl Warren, Chief Justice of the United States, the twenty-second day of June, in the year of our Lord one thousand nine hundred and fifty-four.

Harold B. Willey, Clerk of the Supreme Court of the United States. By Hugh W. Barr, Deputy.

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[File endorsement omitted.]

[fol. 189] IN UNITED STATES DISTRICT COURT, NORTHERN  
DISTRICT OF ILLINOIS, EASTERN DIVISION

[Title omitted]

MOTION OF THE BORDEN COMPANY, ET AL, TO SET DATE FOR  
CONSIDERATION OF ACTION TO BE TAKEN PURSUANT TO  
OPINION AND MANDATE OF SUPREME COURT—Filed June  
28, 1954.

Defendants The Borden Company and Belmont Dairy  
Company, by their attorneys Sidley, Austin, Burgess &  
Smith, move the Court to set a date for consideration of  
action to be taken pursuant to the opinion in this cause of  
the Supreme Court of the United States rendered on May  
17, 1954, and the mandate issued by that Court on June 22,  
1954.

Respectfully submitted, /s./ Stuart S. Ball, /s./ H.  
Blair White, Attorneys for defendants, The Bor-  
den Company and Belmont Dairy Company.

Of Counsel, Sidley, Austin, Burgess & Smith, 11 So. La-  
Salle Street, Chicago 3, Illinois, STate 2-5400.

[fol. 189a] [File endorsement omitted.]

[fol. 190] IN UNITED STATES DISTRICT COURT, NORTHERN  
DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 51 C 947

[Title omitted]

**Transcript of Proceedings of July 1, 1954**

Transcript of proceedings had at the hearing of the above-entitled case before the Hon. William J. Campbell, one of the Judges of said Court, in his Courtroom, U.S. Court-house, Chicago, Illinois, on July 1, 1954, at 2:00 o'clock p.m.

**PRESENT:**

Mr. Earl A. Jinkinson and Mr. Thomas Rothwell, appeared on behalf of the government:

Messrs. Sidley, Austin, Burgess & Smith, By Mr. Stuart S. Ball, and Mr. H. Blair White, appeared on behalf of the Borden Company and Belmont Dairy Company:

[fol. 191] Messrs. Montgomery, Hart, Pritchard & Herriott, By Mr. John Paul Stevens, appeared on behalf of Bowman Dairy Company, and Ridgeview Farms Dairy, Inc.,

Mr. Leo F. Tierney, appeared on behalf of Beloit Dairy Company.

[fol. 192] The Clerk: No. 51 C 947, United States vs Borden Company et al. for consideration of action to be taken pursuant to mandate of the United States Supreme Court.

The Court: I do not know if it is by design or otherwise that this matter appears with the psychopathic case now on the calendar of the court.

Mr. Jinkinson: Your Honor, I might give away a trade secret. Mr. Ball just said to me it sounds like an anti-trust case. I said it sounds like an anti-trust defense.

The Court: Well, I am glad you brought the motion in. I have been waiting to talk to all of you anyway. Before I hear from either one of you would you mind hearing me for a little while?

Mr. Jinkinson: Yes, your Honor.

The Court: Will you sit down here and hear a few observations of mine and then I will hear anything else you have to say.

Mr. Stevens: May I explain, your Honor, Mr. Hart couldn't be here. He is on trial before Judge Barry.

The Court: Oh, thank you. Very well. You represent him.

Mr. Stevens: Yes.

#### STATEMENT BY THE COURT

The Court: Well, we are in receipt of a formidable looking mandate from the Supreme Court of the United States, [fol. 193] and an opinion.

The motion now pending before me asks, in effect, that I give some indication of the manner in which I think this litigation should be ended. Before I do so, I wish to assure all counsel that my remarks are not intended to reflect any views on the merits either of the remaining segment of the government's case or of any defenses which may be asserted by the defendants. My remarks are made within the framework of the opinion of the Supreme Court, and they are intended only to suggest, in response to the pending motion, some direction for the remaining proceedings in this court.

I am sure it is unnecessary to recount the history of this case, and I shall refer only to those portions of the record which shed some light on the matter still before me. I am now concerned solely with the government's charges brought under Section 2(a) of the Clayton Act, as amended. Those charges, and the charges brought under Sections 1 and 2 of the Sherman Act, were dismissed at the conclusion of the government's case. The Supreme Court affirmed the dismissal of the Sherman Act allegations, but remanded the Clayton Act allegations to this court for further consideration. [fol. 193a] To clarify any misunderstanding as to the reasons which impelled me to enter that part of the order of dismissal which related to the Clayton Act allegations, I cite the following portions of my Memorandum of March 30, 1953:

First, at pp. 2872-2873 of the record:

"It is the opinion of the court that the government has shown that Bowman and Borden each has, in past years, discriminated among its purchasers. The evi-

dence relevant to such discriminations is conflicting, and there is much material in the record which tends to show that Bowman and Borden each has some available affirmative defenses. However, at this stage of the case, the court cannot pass on the merits of those defenses. Ordinarily, then this court would hold that Bowman and Borden each has the burden of establishing that the alleged discriminations come within the scope of certain statutory exceptions.

"There is one factor which compels this court to hold that neither Bowman nor Borden need assume that burden. That factor is the decree which was entered by another judge of this court in the case of [fol. 194] *Dean Milk Co. v. American Processing and Sales Co., et al . . . .*"

Next, at p. 2878, of the record:

"A decree of this court entered at the instance of a private litigant is as binding upon a defendant as a decree entered at the instance of the government; and a consent decree, entered by any judge of this court without hearing evidence, is as binding as a decree entered by another judge after a protracted trial. I conclude, therefore, that each of the remaining defendants is now effectively enjoined by this court from performing any of the acts set forth in the government's prayer for injunctive relief insofar as the Clayton Act is concerned."

And finally, at p. 2877 of the record:

"As a court of equity, I will not perform a useless task. The violations of the Clayton Act described in the complaint and shown at the trial are, for the most part, old violations. And to this court, the Dean decree assures, as completely as any decree can assure, that there will be no new violations.

[fol. 195] "For the foregoing reasons, the motions of defendants Bowman, Borden, Ridgeview, and Belmont to dismiss that part of the complaint which alleges violations of Section 2(a) of the Clayton Act must be granted."



As the language of my Memorandum indicates, it was my opinion that the terms of the Dean decree, standing alone, barred the government's claim for injunctive relief as a matter of law. That is not to say that I could not have enumerated other circumstances which might have prompted a dismissal of the government's charges; for example, as I remarked somewhat incidentally in my Memorandum, most of the violations shown at the trial were years old, and I might have expressly held that the relative absence of current violations was one significant reason for dismissing the government's charges. I did not do so, for it was then my opinion that if the government's claim were not barred by the existence of the Dean decree, it would be my duty, even sitting as a chancellor, to proceed forthwith to hear the defendant's case. In short, I did not then consider all the circumstances of this case, and then decide whether or not the government had shown the need for equitable relief.

[fol. 195a] Two months after my Memorandum was announced the Supreme Court decided the case of *United States v. W. T. Grant Co.*, 345 U.S. 629. The decision handed down on May 25, 1953. That case was concerned with the breadth of a district court's discretion to enjoin interlocking corporate directorates, which are proscribed by Section 8 of the Clayton Act. And, it seems to me, the *Grant* Case defined the chancellor's discretion as it had never been defined before. Most, if not all prior decisions tested the validity of some affirmative act by the trial court. Usually, the question presented was whether or not the trial court acted properly in granting the government's request for injunctive relief after the discontinuance of the violations; and the usual answer was the trial court might, in its discretion, grant the relief despite the discontinuance. An illustrative case is *Swift & Co. v. United States*, 276 U.S. 311, decided in 1928, where it was said: "... a suit for an injunction deals primarily, not with past violations, but with threatened future ones. . ." In all the prior cases, the courts were concerned with that which the judge might do, rather than that which he might refuse to do. In *Grant*, however, the district court had refused to grant injunctive relief, and the Supreme Court decided that the refusal was [fol. 196] not an abuse of discretion. That decision was



reconciled with the *Swift* case, and others, which hold that the discontinuance of violations does not in itself disarm the chancellor. These are the words of the *Grant* decision, and I recite them fully, for they will undoubtedly aid my future consideration of this case:

“Along with its power to hear the case, the court’s power to grant injunctive relief survives discontinuance of the illegal conduct.”

Citing authorities.

“The purpose of an injunction is to prevent future violations,——”

Citing the *Swift* Case, 276 U.S. 311, 326.

“and, of course, it can be utilized even without a showing of past wrongs. But the moving party must satisfy the court that relief is needed. The necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive. The chancellor’s discretion is based on all the circumstances; his discretion is necessarily broad and a strong [fol. 196a] showing of abuse must be made to reverse it. To be considered are the bona fides of the expressed intent to comply, the effectiveness of the discontinuance and, in some cases, the character of the past violations.”

The Supreme Court’s opinion in the instant case re-affirms the language of the *Grant* Case, but states that my dismissal of the government’s charges *solely* because of the existence of the Dean decree was an abuse of discretion. It was also stated, however, that the existence of that decree is a factor which might, and perhaps should be considered, along with all other factors, after remand. I refer now to this part of the Court’s opinion, which will be found at page 520, 347 U.S.:

“... we cannot say that the existence of the private decree warrants *no* consideration by the chancellor in assessing the likelihood of recurring illegal activity. We hold only that, in view of the difference in the respective interests sought to be vindicated by the Gov-

ernment and the private litigant, the district judge abused his discretion in refusing the Government an [fol. 197] injunction solely because of the existence of the private decree."

I have had some difficulty in reconciling this statement of the Supreme Court with the views expressed in the *Grant* Case. It seems to me that the *Grant* opinion points to the only relevant question presented here: Did the dismissal of the Clayton Act allegations because of the existence of the private decree, *when viewed in the light of all other circumstances*, constitute an abuse of discretion? As I read the *Grant* opinion, an "abuse of discretion" is defined as a dismissal of the government's charges despite a probability of recurring illegal activity. Why, then, should the decision in this case have been grounded on "the difference in the respective interests sought to be vindicated by the Government and the private litigant"? Certainly, the interests are not the same, but what has that to do with the probability or improbability of recurring illegal activity?

These questions are troublesome, for they raise some doubt as to the role which the Dean decree should play in my future consideration of this case; and the questions are not easily answered by my reading of the Supreme Court's opinion. Thus, the opinion states:

[fol. 198] "In short, the Government's right and duty to seek an injunction to protect the public interest exist without regard to any private suit or decree."

Then a later passage states:

"The government contends that it has 'an independent right to relief against violations of the Clayton Act, without regard to whether such violations previously have been enjoined by a decree in a private anti-trust suit.' But we cannot say that the existence of the private decree warrants *no* consideration. . . ."

It seems to me that the latter statement accurately expresses the opinion of the court, since it is in keeping with the views expressed in the *Grant* opinion. Accordingly, it is my opinion that when I redetermine whether or not the

government has shown a need for equitable relief, I may still accord to the Dean decree such weight as I think it deserves.

The Supreme Court concluded its opinion with the remand of this segment of the case "for further consideration and such further proceedings as may be necessary." The term "further consideration" means but one thing to me—I am [fol. 199] to consider the need for injunctive relief, or, to use the language of the Supreme Court, I am to assess the "likelihood of recurring illegal activity," using as my guides the various circumstances which the record of this case reveals. I cannot state at this time what the relevant considerations will be: That is a matter which I should like to have argued. It may well be that some relevant considerations are suggested by the *Grant* case, if the defendants here, like those in *Grant*, have in fact discontinued the alleged violations. And, as I indicated earlier, the existence of the Dean decree remains as a factor which I must consider. It is therefore my first suggestion to counsel in response to your pending motion that the record of this case be carefully reexamined, to determine whether or not the government has shown the need for equitable relief.

It is my second suggestion that the record of this case be substantially reduced, so that it contains only those matters which are relevant to the issues still before me. You will recall, I am sure, that all government charges, those under Sections 1 and 2 of the Sherman Act, and those under Section 2(a) of the Clayton Act, were joined in one count of one complaint, and that the government's evidence to support both types of charges was necessarily intermingled. [fol. 200] I recognize that in many instances, particularly those of "stop buying," the same evidence was relied upon to substantiate charges under both statutes, but that evidence of that nature must remain in the record. Perhaps, after the task is completed, the record will be almost as lengthy as it is now. I think it would be worthwhile, however, for all parties to designate the exact portions of the record which they intend to use during any further proceedings in this court. The greater burden will of course be placed on the government, which must decide which segment of its case will remain before me when I reconsider the need for injunctive relief. The government must also

decide whether or not it shall ask leave to reopen its case for the presentation of additional evidence, and I shall require that that decision be made within a short time.

As a third suggestion, I recommend that all parties seriously reconsider the possibility of a consent decree. As I indicated in my Memorandum of March 30, 1953, indeed, as the defendants argued before the Supreme Court, the terms of the Dean decree prohibit each defendant from performing any of the unlawful acts described in the government's complaint. It would seem, therefore, that counsel for each defendant would be well-advised to appraise any affirmative [fol. 201] defense he intends to assert, and to consider the high costs of this litigation. An analysis of that type might well persuade all parties to formulate a mutually acceptable decree. I recommend, at the very least, that counsel for the government and the defendants exchange views on this subject within the near future.

My fourth and final suggestion is directed to government counsel. It is simply a recommendation that the government re-examine its own case to determine whether or not, in its present opinion, the public interest justifies continued prosecution of these Clayton Act charges. I think it is fair to state that at every step in this litigation, the Clayton Act allegations were overshadowed by the charges brought under the Sherman Act. If space devoted in the complaint is at all indicative of the relative importance of the two types of charges, it should be noted that the complaint is devoted almost entirely to the government's case under the Sherman Act. The sole reference to alleged violations of the Clayton Act is found in two paragraphs of Section V of the complaint, which Section itself contains 22 paragraphs. The Clayton Act allegations were seldom, if ever discussed at the many conferences which preceded the trial, [fol. 202] and they certainly attracted little attention at the trial, even during oral argument. I do not suggest that I believe that the Clayton Act allegations are groundless or insignificant. I merely suggest that the government counsel forget the mechanics of litigation for the moment, and realistically survey their position, as counsel for defendants have already been asked to do on their part.

**GOVERNMENT ORDERED TO DESIGNATE AND SUBMIT PORTIONS OF RECORD ON WHICH IT INTENDS TO RELY ETC., AND DEFENDANTS TO ALSO DESIGNATE.**

In accordance with the views herein expressed, the government is ordered to designate those portions of the record upon which it intends to rely during future proceedings in this court, and to submit said record, so designated, to this court and to the defendants on or before September 1, 1954. The defendants are ordered to designate any additional portions of the record upon which they intend to rely, and to submit said additions to the court and to the government on or before September 17, 1954. On September 17, 1954, at the regular motions call, a date will be set for the argument, which I have heretofore requested in this Memorandum.

The same constitutes a ruling on the pending motion. Are there any suggestions or observations, gentlemen?

Mr. Jinkinson: Would your Honor like us to submit the record or the designation of that portion of the record? [fol. 203] The Court: No. As I said in the Memorandum, you may well designate the whole record, because it is so intermingled.

Mr. Jinkinson: The mechanics of it, your Honor, do you want the record or just page so and so?

The Court: Oh, oh, I think that you should designate the pages. That is enough, rather than do any copying.

Mr. Jinkinson: Say page so and so.

The Court: Yes. Because I have the record and so have you. It would seem unnecessary.

Mr. Jinkinson: It would mean our typing it all.

The Court: Yes. It is unnecessary clerical work and I think the defendants ought to likewise.

Now, I should also observe, —excuse me for interrupting you. I should also observe that I am conducting emergency court here the last two weeks of July and therefore will be sitting the last two weeks of July, from July 19 to the 30th, inclusive.

Now, I have made four suggestions and issued an order on one of the suggestions. It may well be that after discussing this among yourselves and after re-reading what I

have had to say here and the Reporter can write it up for you, and you can read it over——

[fol. 203a] Mr. Jinkinson: We want a copy of it.

Mr. Ball: Yes. We do too.

The Court: That you may desire, some or all of you may desire to act on some one of the other three suggestions I have made. If so, I will be available during those two weeks in the summer. Otherwise, I shall be available in the Fall. If you would like to discuss it informally after you have gone over my observations, and if you would like all of you to come in and without the Court Reporter have an informal discussion in chambers, after you review my various suggestions, I will be happy to see you any time during those two weeks. The intervening two weeks will give you time enough to read it over and consult with your clients.

Mr. Ball: I have one point of clarification. I assume in gathering the evidence in the record, and in designating it with relation to the Robinson-Patman Act violations, that you have in mind only that relating to Bowman, Borden, Ridgeview and Belmont?

The Court: Yes. Well, the other one is out.

Mr. Tierney: Yes, I was wondering.

The Court: You ought to stay around though.

Mr. Tierney: I am sorry I can't stay with you.

Mr. Jinkinson: Shall we tell him to go and s—— more, your Honor?

[fol. 204] Mr. Tierney: If I prepare some sort of an order for judgment on the mandate, which will amount to an affirmance of your opinion at such and such a date and a dismissal of the complaint, that will be all right?

The Court: Oh, yes. Submit it to the government for approval as to form and bring it in on one of those two weeks I am sitting in July. Certainly. We hate to lose you around here, Mr. Tierney.

Mr. Jinkinson: We do miss him.

Mr. Tierney: I am sorry I will have to leave.

The Court: Yes.

Mr. Jinkinson: One thing I will ask you about, I assume we can have, your Honor, until some time this Fall? I mean maybe the 17th of September for us to make a decision on whether or not we want to reopen it?

The Court: Oh, yes, yes. As far as that is concerned but I want your designation of record on September 1.

Mr. Jinkinson: I am just thinking about our motion to reopen if we want to.

The Court: We still have a piece of this case on the calendar and I want to get rid of it. I have a lot of other cases. Then you can decide what you are going to do and of course whether or not you will be permitted to reopen [fol. 205] is a matter in the discretion of the court.

Mr. Jinkinson: I agree. It is whether or not we want to make the motion.

The Court: Surely. I want you to have sufficient time to consider it and certainly by September 17, after their designation is filed, and you have to answer theirs, that is time enough.

Mr. Jinkinson: All right, thank you.

The Court: Very well, thank you gentlemen.

(Which were all of the Proceedings had at the Hearing of the above entitled cause.)

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[fol. 206] Reporter's Certificate to foregoing transcript omitted in printing.

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[fol. 206a] [File endorsement omitted.]



[fol. 207] IN UNITED STATES DISTRICT COURT, NORTHERN  
DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 51 C 947

[Titled omitted]

PLAINTIFF'S MOTION TO OPEN THE RECORD FOR THE TAKING  
OF FURTHER EVIDENCE—Filed January 11, 1955

Plaintiff, United States of America, moves the Court for an order reopening the record in this case to permit additional evidence to be offered by the United States. In support of this motion, plaintiff submits the following:

1. Plaintiff presented evidence in support of its complaint commencing on March 4, 1953. Plaintiff rested its case on March 23, 1953.

2. The Court, after hearing argument on defendants' motions to dismiss, rendered its opinion in the form of a memorandum on March 30, 1953, granting defendants' motions to dismiss. On June 17, 1953, the Court entered its Findings of Fact, Conclusions of Law, and Judgment thereon dismissing plaintiff's complaint.

3. Finding of Fact No. 36 recited that plaintiff had offered evidence tending to prove that defendants Borden, Bowman, Ridgeview, and Belmont had engaged in price discriminations in the sale of fluid milk to wholesale customers. Finding of Fact No. 37 recited certain injunctive provisions of the final decree in the case of *Dean Milk Company v. American Processing and Sales Company, Inc., et al.*, No. 49 C 1159, entered on December 3, 1952, which decree enjoined further price discriminations by said defendants. [fol. 208] Finding of Fact No. 38 recited that said defendants were now effectively enjoined from further price discriminations. The Conclusion of Law stated, among other things, that the *Dean* decree assures that there will be no new violations and that this Court would not grant the injunctive relief sought by plaintiff.

4. On June 29, 1953, defendants Bowman and Ridgeview filed a motion to amend Findings of Fact No. 36 and No. 38 and to add an additional conclusion of law. The motion of said defendants was in part based upon the opinion of the United States Supreme Court in the case of *United States*



v. *W. T. Grant Co., et al.*, 345 U.S. 629 (May 25, 1953), to the effect that the necessity for injunctive relief is primarily determined by the existence of some cognizable danger of recurring violations. On July 2, 1953, the Court denied this motion of defendants Bowman and Ridgeview.

5. On October 2, 1953, plaintiff filed its petition for appeal to the Supreme Court of the United States and, on the same date, an order was entered allowing such appeal. On May 17, 1954, the Supreme Court rendered its opinion affirming the act of this Court in dismissing the Sherman Act charges of the complaint and reversing the act of this Court dismissing the Clayton Act charges of the complaint against defendants Borden, Bowman, Ridgeview, and Belmont. On June 23, 1954, the mandate of the Supreme Court was filed in this Court, remanding the case to this Court for further consideration and such further proceedings as may be necessary.

6. The sole remaining issue in these proceedings is whether there is need for injunctive relief with respect to the defendants' price discrimination transactions. The need for such injunctive relief may be more positively established by an affirmative showing on the part of the plaintiff that there is a cognizable danger of future violations. This is a factual rather than a legal question, to be resolved by a consideration of evidence rather than of law.

[fol. 209] 7. Plaintiff alleges and represents that the decree in the *Dean* case has not been effective in preventing further price discriminations on the part of these defendants, Borden, Bowman, Ridgeview, and Belmont.

8. Plaintiff alleges and represents that these defendants, Borden, Bowman, Ridgeview, and Belmont, have engaged in discriminations in price between different wholesale purchasers of fluid milk of like grade and quality subsequent to the entry of the *Dean* decree, and that said defendants threaten to and will continue to engage in such price discriminations unless an injunction is entered in this case, which injunction could be enforced by this Court on the petition of the plaintiff.

Earl A. Jinkinson, Special Assistant to the Attorney General. Thomas A. Rothwell, Trial Attorney.  
Room 404 United States Courthouse, Chicago 4,  
Illinois, HArrison 7-4700.

[fol. 209a-264] [File endorsement omitted]

[fol. 265] IN UNITED STATES DISTRICT COURT, NORTHERN  
DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 51 C 947

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE BORDEN COMPANY, et al., Defendants

MEMORANDUM AND ORDER—APRIL 18, 1955

CAMPBELL, District Judge:

On May 17, 1954, the United States Supreme Court decided that this court must consider the need for a decree restraining the alleged violations of the Clayton Act, despite the existence of a prior decree—the “Dean decree”—which now restrains those same violations. As the Supreme Court stated, “the Government’s right and duty to seek an injunction to protect the public interest exist without regard to any private suit or decree.” The Court therefore remanded that part of this cause which relates to the Clayton Act allegations for “further consideration, and such further proceedings as may be necessary.”

On July 1, 1954, at the first of the pretrial conferences held to define the remaining issues, this court carefully construed the term “further consideration.” The court was then and is now of the opinion that under the decisions of the Supreme Court in *United States vs. W. T. Grant Co.*, 345 U. S. 629 (1953) and in the instant case, the term “further consideration” as used in the mandate can mean but one thing: this court is under a duty to assess the “likelihood of recurring illegal activity”, using as its guides the various circumstances which the record of this case reveals. Clearly, as the court stated at the July conference, one such circumstance which must be considered is the existence of the Dean decree and its effect upon the milk industry in Chicago. The Supreme Court itself has stated: “we cannot say that the existence of the private decree warrants no consideration

...” In fairness to the Government, therefore, this court suggested at the pretrial conferences that Government counsel consider the merits of introducing additional evidence to show whether or not, particularly in the light of the Dean decree, there is need for an additional decree. Two years have now passed since any evidence was heard by the court, and during those years, additional evidence bearing upon the effectiveness of the Dean decree might have been gathered by the Government.

The Government has now moved to open the record for the taking of further evidence, and submits in support of its motion that the defendants violated the Clayton Act since the entry of the Dean decree and since the trial in this court. The Government represents in its briefs that it has learned from private complainants and from its own investigators that such violations have occurred. Certainly, if evidence of recent violations is in the possession of the Government, it should be presented to the court before the court decides whether or not the Government has established the need for a decree. After all, in this equity proceeding, evidence of the old violations, such as those now contained in this record, is relevant only to the extent that it sheds [fol. 266] light on the present and future state of the market. In the words of Justice Jackson, speaking for the Court in *United States vs. Oregon Medical Society*, 343 U. S. 326, 333 (1952):

“All it takes to make the cause of action for relief by injunction is a real threat of future violation or a contemporary violation of a nature likely to recur. This established, it adds nothing that the calendar of years gone by might have been filled with transgressions. Even where relief is mandatory in form it is to undo existing conditions, because otherwise they are likely to continue. In a forward-looking action such as this, an examination of ‘a great amount of archeology’ is justified only when it illuminates or explains the present and predicts the shape of things to come.”

Since any evidence of current violations will be particularly relevant to a determination of the likelihood of future violations, the Government’s motion to reopen the record for the presentation of such evidence will be granted. The court

wishes to make clear, however, that the Government will not be permitted to use a further hearing as a means of reinforcing and redeveloping the present record. The Government has designated those portions of the present record upon which it intends to rely during further proceedings, and that designation will guide the court in ruling upon the admissibility of any evidence offered by Government. In short, the Government may introduce only evidence of new violations, if any, which bear upon the effectiveness of the Dean decree.

The Government has also moved for leave to engage in further discovery. The purpose of such discovery, to use the language of the Government's brief, is to separate the wheat from the chaff. The Government represents that it has adequate knowledge of current violations of the Clayton Act, but that it must examine prospective witnesses under oath in order to prepare a concise summary of its evidence for presentation to the Court. If this were a typical lawsuit awaiting a first trial, the Government's argument would be persuasive; but this suit is years old, and, if all that the Government alleges be true, there is a pressing need for a final decree. As counsel well know, the usual discovery process is protracted and time-consuming, and, if permitted here, will certainly delay the entry of a judgment. Since the only suggested purpose of discovery is to eliminate irrelevant testimony at the trial, and since discovery, if permitted, would unduly prolong these proceedings, the Government's motion for leave to engage in discovery will be denied.

The only remaining matter before the court is the motion of the State of Wisconsin for leave to file a brief *amicus curiae*. The State of Wisconsin submits three points in support of its motion: (1) The questions raised by this litigation "are of great importance" to its citizens; (2) More dairy products are produced in Wisconsin than in any other state, and a large amount of Wisconsin dairy products is sold in the Chicago area; and (3) "Certain trade practices" in the Chicago area have an adverse effect upon the State of Wisconsin and a substantial number of its citizens. Thus, any argument made by the State of Wisconsin would be premised upon the effect of "certain trade practices." Such argument is premature, for the court has not yet drafted its findings with respect to any alleged trade prac-

tiées. If and when the court finds that any trade practices of the defendants adversely affect the State of Wisconsin, it will entertain suggestions by that State for the preparation of an appropriate decree. At this pre-trial stage, such suggestions are improper, and the motion of the State of Wisconsin will be denied.

For the reason stated, the Government's motion to open the record for the taking of further evidence is granted and same will be heard May 16, 1955; the Government's motion [fols. 267-276] for leave to engage in discovery is denied; and the motion of the State of Wisconsin for leave to file a brief *amicus curiae* is denied.

Campbell, Judge.

April 18, 1955.

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[fol. 277] [File endorsement omitted.]

[fol. 278] **IN UNITED STATES DISTRICT COURT, NORTHERN  
DISTRICT OF ILLINOIS, EASTERN DIVISION**

No. 51 C 947

[Title omitted]

**Transcript of Proceedings of September 26, 1955**

Transcript of proceedings had at the pretrial conference in the above-entitled cause before Hon. William J. Campbell, one of the Judges of said Court, in his jury room, U.S. Court House, Chicago, Illinois, commencing on Monday, September 26, 1955, at two o'clock P.M.

**PRESENT:**

Mr. Earl A. Jinkinson, Mr. Bertram Long and Mr. Thomas Kerr, on behalf of the Government;

Mr. Edward L. Hart, Jr. and Mr. John P. Stevens, on behalf of Defendants Bowman Dairy Company and Ridgeview Farms Dairy, Inc.;

[fol. 279] Mr. Stuart S. Ball, Mr. Blair C. White and Mr. Joseph Greaves on behalf of Defendants The Borden Company and Belmont Dairy Company.

[fol. 280] **STATEMENT BY COURT AS TO PROCEDURE  
AND COLLOQUY THEREON**

The Court: Who wants to speak first, if anyone?

I thought my memorandum of April 18, 1955, pretty well summed up the situation as far as I am concerned.

As I see it, if we are going ahead without any consent decree, which I understand is the situation, I am willing to—as I thought I pointed out at the time this decree—I will hear argument one way or the other.

As I see the issue at the present time, I am willing to hear any evidence of violations of the Clayton Act, first, that may have occurred since the entry of my formal order, and up to the date of the commencement of this hearing.

I will then hear the defenses of the defendants, affirmative and otherwise, statutory and otherwise, on all matters that the defense may care to advance.

As I indicated in my prior memorandum, there are several matters on which I think the defense probably from the cross examination that I heard of the Government witnesses has an explanation pursuant to the provisions of the Statute.

Then I will close the taking of proofs and take the remaining issue on briefs.

That is my disposition as to procedure.  
[fol. 281] I would like to dispose of it without any other hearing. Of course, I thought I ruled on it in my memorandum of April 18th: the possibility of reconsidering the evidence on the basis that it is now in, and permitting the defense to go ahead with whatever affirmative proof which is set up in their answer. There are two or three paragraphs devoted to it in the answers of the defendants.

I think although I have ruled against the Government on further discovery, and have also ruled that the Government designate the portions of the record now before the Court on which it intends to rely, that I should permit the Government the proof of any acts of the defendants that may have occurred between the time of my last decree and the present date of hearing.

All of this, of course, is to be taken into consideration more particularly in the light of the Supreme Court's decree in this case and in the Grant case.

That is about my summation. I will hear from either one of you. I am open to persuasion otherwise.

Mr. Ball: May I raise a question or two of suggestion, if your Honor please?

The Court: Certainly, Mr. Ball.

Mr. Ball: One of the propositions that has really seemed [fol. 282] to us to be controlling would be whether the Government in following up their offer of proof would establish enough of the recent violations to suggest that the record be re-opened to require the defense to be put in.

In other words, the issue as it seemed to us was whether there is substantial evidence that the Government can produce that the Dean decree has not been effective.

It seemed to me that one of the issues that we want to be sure of after the end of the Government's presentation next week is the question of whether that quantum that they introduce at that time disposes of that issue. I thought

probably we ought to dispose of that before we go into what might be an considerably lengthy discussion of the defense.

The Court: Since this is a pre-trial conference and our guards are to some extent down, let me ask you this: About how long would the defense want, you and Mr. Hart, in the presentation of such testimony as you may have, that you were prepared to go ahead with when I took the case away from you after the last hearing?

How long or how much time would you want to present the defense that you had at that time, accumulative against the Clayton Act charges, against whatever may arise if [fol. 283] the Government proceeds to prove some more current violations? What is your best guess? How long would it take?

Mr. Ball: Well, assuming——

The Court: I am getting at the practical end of this first.

What is your guess?

Mr. Ball: Ed, would you like to speak first, or should I?

Mr. Hart: You go ahead. You started.

Mr. Ball: My own feeling is, looking at the evidence alone that was in the record, while there was no mention of that evidence to——

The Court: Don't argue it now.

Mr. Ball: I am not arguing it. The type of issue that is raised even by that small amount might require, for example, very extensive evidence bearing upon costs and so forth.

Now, the form in which that would be presented, I think, is a problem that we cannot resolve. I cannot anticipate what kind of cross examination or other matters might arise on that. But, I would think it might very well take, judging from what I know about the evidence, two or three weeks to put that in.

What do you feel?

Mr. Jinkinson: You had better base that on a thorough [fol. 284] and searching cross examination.

Mr. Ball: That is what I am assuming.

Mr. Hart: About two or three months.

The Court: Of course, we probably could get a great



deal of this cost evidence on pre-trial order as we did the last time, couldn't we?

Mr. Ball: Now, the difficulty—well, we did not attempt to get any of the cost evidence in.

The Court: Of course not, but I say we got similar evidence required by the Government as to sales, contracts, and so forth, in by pre-trial order. I should think what cost evidence you want in so far as it is merely a reflection of your records is concerned, couldn't we get it in by stipulation in a pre-trial conference?

Mr. Ball: I think you will appreciate that we will try to do that, but we have to get one thing clear on that: It is again what might be in the way of this added evidence that would require cost problems as of an entirely different date.

The Court: That you might know of. On that I would be disposed after hearing what the Government has to offer, and as I have already indicated in my memorandum, I think they should be given in equity an opportunity to prove anything that they may be able to prove since the [fol. 285] date of this formal decree and the date of the commencement of this hearing. After we hear what they have, if anything, and this takes you by surprise and you need additional time for preparation, I could give it to you at that time with the admonition by the Court that as much of as can be stipulated to I would expect to be stipulated by the Government, so we save actual days in court. Then I will set a trial date after that to go ahead with the rest.

My thought is to take in what evidence has to be gotten in here, and then proceed on briefs, which I think will give me time to work nights and week-ends and still keep up with by trial calendar. I am disposed to give you whatever additional time may be needed after we have the Government's presentation. When the Government rests, then I will expect you and Mr. Hart to tell me what your problems are in meeting the new evidence. Perhaps you can go ahead with meeting what is in the original record at that time, if you want to, or do it in one bite at the cherry, if you rather wait until later. Since we are sitting without a jury, there is no reason why I cannot accommodate counsel for both sides in this matter, and then we will set the time for briefs.

How is the Government's feelings? I understand you

have gotten quite a few cases referred to your division [fol. 286] out here.

Mr. Jinkinson: Yes, we have.

Mr. Ball: There is one phrase that the Court used that bothers me a little bit.

The Court: Well, please don't worry about my unhappy choice of phrases. I mean, that is something I have been cursed with all these years. Even the Supreme Court does not understand my phraseology at times.

Mr. Hart: There is one phrase that the Court uses it seems to me very frequently that bothers me and that is "motion denied."

The Court: Mr. Ball, what is the phrase?

Mr. Ball: When the Court says you would be inclined to let the Government go ahead with anything that they bad.

The Court: Relative to the Clayton Act violations.

Mr. Ball: What I think you mean by that is bearing on: One, the type of proof that was in the original case; two, the question of the effectiveness of the Dean decree.

The Court: As to the effectiveness of the Dean decree, I think that is a matter for me to decide after I hear whatever they have to offer.

As to violations, I think they are restricted only by their complaint.

[fol. 287] Mr. Jinkinson: That is right.

The Court: And, also, they are restricted by the dates that I have arbitrarily given them.

In other words, I will still hold them to their allegations in the complaint with reference to the Clayton Act violations. As I recall, they are quite meager, but general.

Secondly, I will also hold them to the dates. They must be within the framework of the complaint, and within the dates from the time of the entry of judgment in the former trial, and prior to the commencement of the trial in this particular instance.

That is what I intended to convey. If there is any misunderstanding, does this straighten it out?

Mr. Jinkinson: It straightens out the Government as to that.

Mr. Hart: How about the offer of proof? Are they restricted in any way on that?

**The Court:** You mean that they filed in connection with the motion I decided some time ago?

**Mr. Hart:** Yes.

**The Court:** No. I would not restrict them.

In other words, what I think I ought to send to the Supreme Court for its future review in this case if I decide in favor of the defendants—I assume that if I decide in favor of the Government, there will be no appeal, because [fol. 288] defendants always agree with these things, knowing the wisdom of this Court.

**The Government** has that yet to learn.

What I would like to say is that I think in order that the Supreme Court on a future look at this thing may have a complete picture of the situation as it exists today.

As I remember Justice Clark's opinion, he means, from what he says, the chancellor to assess the immediate danger, if any, or the immediate need of the Government to an injunction as of the time of hearing.

Now, that should not be restricted, either by the filing of a formal offer of proof at an earlier date or by the evidence that was received in support of the Government's Clayton Act contentions at the earlier trial. It should be what is the situation today. If I remember Justice Clark's opinion correctly, that is what he wants.

Now, for me to say, and I think the Justice left the door open for me to say it, for me to say, "I have given the evidence further consideration. I will not permit the Government to introduce any other evidence. I will now permit the defendants to go ahead and make presentation of the affirmative defense that they set up in their previous answer [fols. 289-450] without regard to what has happened between then and now," would be merely to invite a further direction by the Supreme Court to a further review of the whole situation.

What I would like to give the Supreme Court is this—for what it may be worth, my evaluation of the situation as of the date of the hearing with reference to the Clayton Act violations.

Do I make myself clear?

**Mr. Jinkinson:** I think that is exactly what the Government was going to contend for.

The Court: You mean I have ruled for you without your argument?

Mr. Jinkinson: There is only one thing that bothers me. That is, Mr. Ball's statement about substantial evidence. I don't know what he means by "substantial evidence." I don't know what he means.

The Court: Let me ask you. What have you got? What are you going to offer? I will not allow you to rehash what you already have in the record.

Mr. Jinkinson: We understand what you told us. We are not going to attempt to introduce any evidence other than in 1955—what happened in 1955.

. . . . .

[fol. 451] IN UNITED STATES DISTRICT COURT, NORTHERN  
DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 51 C 947

[Title omitted]

#### SUPPLEMENTAL PRE-TRIAL ORDER—November 4, 1955

The Court having directed the attorneys for the parties to appear before it for a pre-trial conference and the Court having set September 26, 1955 as the date for said conference; the Court having met with counsel for the parties on said September 26 and from time to time thereafter, and the plaintiff and the defendant Bowman Dairy Company having come to certain agreements, in the course of said conferences,

It is ordered:

1. This order is a supplement to the Pre-Trial Order entered in this cause on March 4, 1953;
2. This order only pertains to the plaintiff and the defendant The Bowman Dairy Company;
3. The introduction of evidence under any and all of said agreements is made without agreement as to the weight of such matters and subject to the objection reserved by the plaintiff and the Bowman Dairy Company that the evidence sought to be introduced is immaterial or irrelevant, and the same reservation and objection

[fol. 452]

shall apply to all stipulations, agreements, and admissions of fact contained in this order;

4. That this supplemental pre-trial order and all matters herein referred to and all admissions of fact and agreements with respect to the trial of this action shall be used for no other purpose than the trial of this action and are made solely for the purposes of this trial.

#### Agreements of Fact Between Plaintiff and the Bowman Dairy Company

1. For purposes of this cause, fluid milk as defined in the Pre-Trial Order of March 4, 1953 may be converted into points in the following manner:

|                         |                 |
|-------------------------|-----------------|
| 1 qt. of Milk           | equals 1 point  |
| 1 qt. Sta-Slim          | equals 1 point  |
| 1 qt. Skim Milk         | equals 1 point  |
| 1 qt. Buttermilk        | equals 1 point  |
| 1 qt. Dari-Rich         | equals 1 point  |
| 1 qt. Chocolate Milk    | equals 1 point  |
| 1 qt. Strawberry Milk   | equals 1 point  |
| $\frac{1}{2}$ gal. Milk | equals 2 points |
| 1 gal. jug Milk         | equals 4 points |
| 1 pt. Half and Half     | equals 1 point  |
| $\frac{1}{2}$ pt. Cream | equals 1 point  |
| 1 qt. Cream             | equals 4 points |

[fol. 453] Further, the following other types or kinds of dairy products may be converted into points thus:

|   |                 |
|---|-----------------|
| 1 qt. Eggnog  | equals 2 points |
| $\frac{1}{2}$ pt. Whipping Cream                            | equals 1 point  |
| 1 can Quick-Whip  | equals 1 point  |
| 1 pt. Sour Cream  | equals 2 points |
| $\frac{1}{2}$ pt. Sour Cream                                | equals 1 point  |
| 1 qt. Energee   | equals 2 points |
| $\frac{1}{2}$ pt. Yogurt                                    | equals 1 point  |
| 1 pkg. Cottage Cheese, whether plain, chives, or pine-apple | equals 1 point  |

2. That the "Bowman Dairy Company Resale Store Discount Schedule" effective June 1, 1954, marked for identification as Exhibit 1, along with an amendment effective August 25, 1954, marked for identification as Exhibit 2, may be offered in evidence without further proof or authentication.

3. That Exhibit 1 was used as the basis for computing discounts upon all sales of fluid milk by the Bowman Dairy Company to independently owned store customers in the Chicago area during the period June 1, 1954 through

August 24, 1954 and that Exhibit 1, as supplemented by Exhibit 2, was used as the basis for computing discounts upon all sales of fluid milk by the Bowman Dairy Company to independently owned store customers during the period August 25, 1954 through August 23, 1955, as illustrated by the March 1955 sales to, and the March 1955 discounts [fol. 454] paid to, the independently owned store customers listed in Schedules I and II attached hereto.

4. That the letter from Bowman to the Great Atlantic & Pacific Tea Company dated May 28, 1954, marked for identification as Exhibit 3, may be offered in evidence without further proof or authentication, and that the rate stated therein was used as the basis for computing discounts upon all sales of fluid milk by Bowman to the Great Atlantic & Pacific Tea Company and delivered by Bowman to A & P's retail stores in the Chicago area during the period June 1, 1954 through August 22, 1955, as referred to on Schedules I and II attached hereto.

5. That the letter from Bowman to The Kroger Co. dated May 28, 1954, marked for identification as Exhibit 4, may be offered in evidence without further proof or authentication, and that the rate stated therein was used as the basis for computing discounts upon all sales of fluid milk by Bowman to The Kroger Co. and delivered by Bowman to Kroger's retail stores in the Chicago area during the period June 1, 1954 through August 23, 1955, as referred to on Schedules I and II attached hereto.

6. That during March 1955, Bowman sold fluid milk to the wholesale customers named on Schedules I and II attached hereto, as well as many other wholesale customers, at the same unit selling prices, and that during the following month Bowman paid the wholesale customers named on Schedules I and II attached hereto the discounts upon the March 1955 business shown on the schedules.

[fol. 455] 7. That all of the wholesale fluid milk customers listed on Schedule I attached hereto were regularly served on the same milk route during the month of March 1955.

8. That all of the wholesale fluid milk customers listed on Schedule II attached hereto were regularly served on the same milk route during the month of March 1955.

9. That the attached schedules entitled "Bowman Store Customers on Route No. 129 for March 1955" and "Bowman Store Customers on Route No. 1471 for March 1955," also marked as Schedules I and II, may be offered in evidence as statements of the facts appearing on said schedules without further proof or authentication.

10. That the classes and units of fluid milk referred to in Schedules I and II attached hereto are uniform in chemical and physical properties as between said customers.

11. That the customers listed on Schedules I and II are not all of the customers regularly served by Bowman on its Routes 129 and 1471.

[fol. 456] 12. That the prices charged by Bowman for quarts, half gallons and gallons of milk to the Great Atlantic & Pacific Tea Company, The Kroger Co., Goldblatt Bros., and independently owned store customers in the Chicago area during the month of September 1955 were as follows:

|                  |          |           |           |
|------------------|----------|-----------|-----------|
| (a) A & P        | 9/1-9/18 | 9/19-9/30 |           |
| Quarts           | 17       | 16        | 69        |
| Half Gallons     | 33       | 32        | 46        |
| Gallons          | 62       | 62        |           |
| (b) Kroger       | 9/1-9/11 | 9/12-9/18 | 9/19-9/30 |
| Quarts           | 19       | 32        | 17        |
| Half Gallons     | 37       | 50        | 33        |
| Gallons          | 70       | 46        | 62        |
| (c) Goldblatt's  | 9/1-9/25 | 9/26-9/30 |           |
| Quarts           | 18       | 18        | 5         |
| Half Gallons     | 35       | 36        |           |
| Gallons          | 67       | 69        |           |
| (d) Independents | 9/1-9/25 | 9/26-9/30 |           |
| Quarts           | 18       | 18        | 5         |
| Half Gallons     | 35       | 36        |           |
| Gallons          | 67       | 69        |           |

and that these prices were charged for the milk delivered by Bowman during September to the stores listed on Schedules I and II attached hereto.

[fol. 457] 13. That the discounts paid by the Bowman Dairy Company to the Great Atlantic & Pacific Tea Company, The Kroger Co., Goldblatt Bros., and independently owned store customers on account of their respective purchases of fluid milk during the month of September 1955, were as follows:

|                  |                         |                   |
|------------------|-------------------------|-------------------|
| (a) A & P        | 9/1 to 9/30             | No discount       |
| (b) Kroger       | 9/1 to 9/11             | 11%               |
|                  | 9/12 to 9/30            | No discount       |
| (c) Goldblatt's  | 9/1 to 9/18             | 3 $\frac{1}{2}$ % |
|                  | 9/19 to 9/25            | 5%                |
|                  | 9/26 to 9/30            | 7 $\frac{1}{2}$ % |
| (d) Independents | 9/1 to 9/25             | No discount       |
|                  | 9/26 to 9/30            | No discount       |
|                  | Under 25 points per day | No discount       |
|                  | 25-49 points per day    | 2%                |
|                  | 50-149 points per day   | 3%                |
|                  | 150-249 points per day  | 4%                |
|                  | Over 250 points per day | 5%                |

and that discounts in accordance with the listing above were paid for the milk delivered by Bowman during September to The Kroger Co., Goldblatt Bros. and to the independent stores listed on Schedules I and II attached hereto.

[fol. 458] 14. That the attached chart entitled "Bowman Downtown Chicago Accounts—March 1955," Schedule III, may be offered in evidence as a statement of the facts appearing on said schedule without further proof or authentication.

15. That the classes and units of fluid milk referred to in each column of Schedule III may be sold and delivered in different types and sizes of containers, but said classes and units of fluid milk are uniform in chemical and physical properties as between the customers referred to in Schedule III.

16. The locations of the places of business of the Bowman wholesale customers referred to or reported on Schedules I, II and III are marked on a copy of Gorand's 1951 Edition Street Map of Chicago and Suburbs, which map, marked for identification as Exhibit 5, may be received in evidence without further proof or authentication.

Enter:

Campbell, United States District Judge.



[ fol. 459 ]

## SCHEDULE I

Bowman Store Customers on Route 129 for March 1955

| Bowman Wholesale<br>Store Customer        | Average<br>Daily<br>Converted<br>Pails | Total<br>Dollar<br>Volume<br>Per Month | Per Cent<br>Discount | Amount of<br>Discount<br>Paid |
|---|--|--|----------------------|-------------------------------|
| Reuther's Grocery<br>524 West 71st Street | 108.3                                  | 8,602.11                               | 6.16%                | \$537.09                      |
| Union Food Shop<br>646 West 69th Street   | 111.7                                  | 638.45                                 | 6.22%                | 39.71                         |
| A & P (#258)<br>6702 Wentworth Avenue     | 360.3                                  | 2,006.53                               | 1                    | 1                             |
| Charlie's Market<br>427 West 69th Street  | 202.8                                  | 1,137.39                               | 7.35%                | \$83.60                       |
| Kroger<br>7260 Wentworth Avenue           | 208.4                                  | 1,196.09                               | 2                    | 2                             |

<sup>1</sup> A discount of 11% (See Exhibit 3) was paid by Bowman Dairy Company to The Great Atlantic & Pacific Tea Company on the basis of the total sales of fluid milk by Bowman Dairy Company to The Great Atlantic & Pacific Tea Company in the Chicago area. The dollar volume of fluid milk delivered by Bowman Dairy Company to this A & P store during March was \$2,006.53; 11% of this amount is \$220.72.

<sup>2</sup> A discount of 11% (See Exhibit 4) was paid by Bowman Dairy Company to The Kroger Co. on the basis of the total sales of fluid milk by Bowman Dairy Company to The Kroger Co. in the Chicago area. The dollar volume of fluid milk delivered by Bowman Dairy Company to this Kroger store during March was \$1,196.09; 11% of this amount is \$131.57.

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## SCHEDULE II

Bowman Store Customers on Route 1471 for March 1955

| Bowman Wholesale Store Customer                   | Average Daily Converted Points | Total Dollar Volume Per Month | Per Cent Discount | Amount of Discount Paid |
|---|--------------------------------|-------------------------------|-------------------|-------------------------|
| S. Tousselaire<br>2640 West 51st Street           | 418.3                          | \$ 677.77                     | 6.36%             | \$ 43.11                |
| A & P<br>2601 West 51st Street                    | 340.0                          | 1,899.49                      |                   |                         |
| Goldblatt's<br>47th and Ashland Avenue            | 208.6                          | 1,214.34                      |                   |                         |
| Gus Psomakos<br>Spotlite<br>2446 West 47th Street | 281.0                          | 1,648.33                      | 7.87%             | 129.72                  |

A discount of 11% (See Exhibit 3) was paid by Bowman Dairy Company to The Great Atlantic & Pacific Tea Company on the basis of the total sales of fluid milk to Bowman Dairy Company to The Great Atlantic & Pacific Tea Company in the Chicago area. The dollar volume of fluid milk delivered by Bowman Dairy Company to this A & P store during March was \$1,899.49. 11% of this amount is \$208.94.

A discount of 8 1/2% was paid by Bowman Dairy Company to Goldblatt Bros. on the basis of the total sales of fluid milk by Bowman Dairy Company to Goldblatt Bros. in the Chicago area. The dollar volume of fluid milk delivered by Bowman Dairy Company to this Goldblatt store during March was \$1,214.34. 8 1/2% of this amount is \$103.22.

## SCHEDULE III

Bowman Downtown Chicago Accounts - March 1955

| Name and Address of Account     |                      | Total Dollar<br>Volume of<br>Purchases<br>of all Dairy<br>Products <sup>1</sup> | Milk               |                   | Cream   |   | Half and Half                    |   |     |        |
|---------------------------------|----------------------|---|--------------------|-------------------|---|---|----------------------------------|---|-----|--------|
|                                 |                      |   | Dispenser<br>Gals. | Price<br>per Gal. | <sup>1</sup> / <sub>2</sub> Pts.<br>Price per<br><sup>1</sup> / <sub>2</sub> Pint | <sup>1</sup> / <sub>2</sub> Pts.<br>Price per<br><sup>1</sup> / <sub>2</sub> Pint | 18<br>Gals.<br>Price per<br>Gal. | Half and Half<br>Gals.<br>Price per<br>Gal. |     |        |
| 1. Eastgate Hotel               | 162 E. Ontario St.   | \$ 347.32   |                    |                   | 1 404   | \$ 0625   | 57                               | \$4.19                                      |     |        |
| 2. St. Clair Hotel              | 162 E. Ohio St.      | 538.98  | 125                | 72                |   |   | 98                               | 3.19  |     |        |
| 3. (Ehlen's) Tracy Restnt.      | 540 No. Michigan     | 461.13  |                    |                   | 2 376   | 055   |                                  |   | 84  | \$2.10 |
| 4. B/G Foods,                   | 430 No. Michigan     | 423.92  |                    |                   |   |   |                                  |   |     |        |
| 5. Polly Tea Room & Grill       | 410 No. Michigan     | 668.13  | 205                | 75                | 2 256   | 06  |                                  |   | 105 | 2.17   |
|                                 |                      |   |                    |                   |   |   |                                  |   | 180 | 2.36   |
| 6. B/G Foods                    | 230 No. Michigan     | 822.15  |                    |                   | 5 460   | 06  |                                  |   | 165 | 2.17   |
| 7. (Ehlen's) Kuberd Restnt.     | 172 No. Wabash       | 476.50  | 140                | 70                |   |   |                                  |   | 63  | 2.10   |
| 8. Carder's Restaurant          | 118 No. Dearborn St. | 697.23  |                    |                   | 2 616   | 065   |                                  |   | 79  | 2.36   |
| 9. Ham 'n Egger Restaurant      | 58 W. Randolph St.   | 151.91  |                    |                   | 864   | 06  |                                  |   | 37  | 2.14   |
| 10. B/G Foods                   | 174 W. Randolph St.  | 396.32  |                    |                   | 1 608   | 06  |                                  |   | 105 | 2.17   |
| 11. Weldon Lagerlof             | 201 No. Wells St.    | 454.90  | 220                | 74                |   |   |                                  |   | 90  | 2.00   |
| 12. Charles Harrison Restnt.    | 1 No. La Salle St.   | 1 131.61  |                    |                   | 5 045   | 06  |                                  |   | 247 | 2.07   |
| 13. La Salle Pharmacy           | 2 No. La Salle St.   | 478.44  | 420                | 65                | 108   | 0575  |                                  |   | 98  | 1.76   |
| 14. Lagerlof Lindquist Restnt.  | 100 No. Franklin St. | 556.20  | 285                | 74                |   |   |                                  |   | 131 | 2.00   |
| 15. (Ehlen's) Kuberd Restnt.    | 107 So. La Salle St. | 556.74  | 195                | 70                |   |   |                                  |   | 77  | 2.10   |
| 16. Wales Restaurant            | Quincy and So. Wells | 382.60  | 240                | 71                |   |   |                                  |   | 94  | 2.10   |
| 17. B/G Foods                   | 176 W. Jackson       | 890.02  | 265                | 73                |   |   |                                  |   | 169 | 2.17   |
| 18. Atlantic Hotel              | 316 So. Clark St.    | 1 258.23  |                    |                   | 6 360   | 06  |                                  |   | 260 | 2.09   |
| 19. Wales Restaurant            | 220 So. Clark St.    | 956.41  | 565                | 71                |   |   |                                  |   | 236 | 2.10   |
| 20. Welty's Field Bldg. Restnt. | 130 So. Clark St.    | 1 594.65  | 690                | 66                | 3 432   | 0575  |                                  |   | 350 | 1.84   |
| 21. Walter Lagerlof Restnt.     | 119 So. Clark St.    | 791.00  | 265                | 74                |   |   | 136                              | 3.00  |     |        |
| 22. B/G Foods                   | 109 So. Clark St.    | 429.23  |                    |                   | 1 710   | 06  |                                  |   | 125 | 2.17   |
| 23. Italian Village             | 71 W. Monroe St.     | 379.68  |                    |                   | 1 800   | 0675  | 67                               | 3.49  |     |        |
| 24. B/G Foods                   | 33 W. Monroe St.     | 447.95  |                    |                   | 2 016   | 06  |                                  |   | 121 | 2.17   |
| 25. Polly Tea Room & Grill      | 17 No. Wabash Ave.   | 408.96  | 140                | 75                |   |   |                                  |   | 98  | 2.36   |
| 26. B/G Foods                   | 118 So. Michigan     | 680.47  |                    |                   | 3 648   | 06  |                                  |   | 157 | 2.17   |
| 27. Harvey Restaurant           | 310 So. Michigan     | 1 073.32  |                    |                   | 4 388   | 065   | 179                              | 3.14  |     |        |
| 28. Wales Restaurant            | 330 So. Michigan     | 614.95  | 340                | 71                | 330   | 06  |                                  |   | 152 | 2.10   |
| 29. B/G Foods                   | 63 E. Van Buren St.  | 482.79  |                    |                   | 2 608   | 06  |                                  |   | 118 | 2.17   |
| 30. (Ehlen's) Hamilton Grill    | 600 So. Michigan     | 461.33  | 180                | 70                |   |   |                                  |   | 84  | 2.10   |
| 31. Sheraton Blackstone Hotel   | 636 So. Michigan     | 2 592.84  | 215                | 59                | 9 648   | 0525  | 586                              | 2.05  | 64  | 1.67   |
| 32. Harvey Restaurant           | Dearborn Station     | 1 580.88  | 655                | 74                |   |   | 276                              | 3.14  |     |        |
| 33. Harvey Restaurant           | Union Station        | 2 618.43  | 595                | 74                |   |   | 168                              | 3.14  |     |        |

<sup>1</sup> Includes all other dairy products purchased from Bowman in addition to those itemized on this schedule.<sup>2</sup> Served during period from 3/23/55 through 3/31/55 only.



## EXHIBIT 1

[fol. 462] — Bowman Dairy Company  
 Resale Store Discount Schedule  
 Graduated Resale Store Discount Schedule

| Average<br>Converted<br>Points<br>Per Day | Percent of<br>Discount | Average<br>Converted<br>Points<br>Per Day | Percent of<br>Discount |
|---|------------------------|---|------------------------|
| 0 to 10                                   | 3 0% to 3 4%           | 80 to 90                                  | 5 6% to 5 8%           |
| 10 to 20                                  | 3 4% to 3 8%           | 90 to 100                                 | 5 8% to 6 0%           |
| 20 to 30                                  | 3 8% to 4 2%           | 100 to 110                                | 6 0% to 6 2%           |
| 30 to 40                                  | 4 2% to 4 6%           | 110 to 120                                | 6 2% to 6 4%           |
| 40 to 50                                  | 4 6% to 5 0%           | 120 to 130                                | 6 4% to 6 6%           |
| 50 to 60                                  | 5 0% to 5 2%           | 130 to 140                                | 6 6% to 6 8%           |
| 60 to 70                                  | 5 2% to 5 4%           | 140 to 150                                | 6 8% to 7 0%           |
| 70 to 80                                  | 5 4% to 5 6%           |   |                        |

Discounts may be changed from time to time by notice as market conditions vary.

These discounts will be paid upon the following conditions:

1. Purchase of an average of one or more converted points of Bowman milk products per normal delivery day.
2. The store customer must expedite the driver salesman in obtaining the order and collecting for it.

Discounts will be computed as follows:

1. Your total purchases of Bowman milk products will be converted to points. This total will be divided by the number of days during the month upon which Bowman Dairy Company make store deliveries. The result becomes your average points per day.
2. From your average points per day your discount is determined from the discount schedule above.
3. Your discount rate for the month will then be applied to the dollar value of your total purchases of Bowman Dairy Company's milk products, which shall include the following:
  - Milk, including quarts, half gallons and gallons
  - Golden Guernsey
  - Cream, including Half & Half, Rich Cream and Whipping Cream
  - Quick-Whip

Sour Cream  
Buttermilk  
Dari-Rich  
Energee  
Sta-Slim  
Yogurt  
Egg Nog  
Strawberry Drink  
Certified Products  
Cottage Cheese

Discount checks will be mailed to you during the month following the month upon which your discount rate is computed.

Bowman Dairy Company.

No. 8. Revised Discount Schedule Effective June 1, 1954 in conjunction with price decrease effective same date.

[fol. 463]

EXHIBIT 2

This schedule in effect since June 1, 1954 except that on August 25, 1954, the following was added to the schedule, but not published:

|            |              |
|------------|--------------|
| 150 to 200 | 7.0% to 8.0% |
| over 200   | 8%           |

[fol. 464]

## EXHIBIT 3

Bowman Dairy Company  
The Milk of Superior Flavor  
Head Office—140 W. Ontario Street  
Telephone SUperior 7-6800  
Chicago 10, Illinois

May 28th, 1954.

The Great Atlantic and Pacific Tea Company,  
2622 North Pulaski Road,  
Chicago 39, Illinois.

Att'n—Mr. C. L. Anderson, Director of Purchases

GENTLEMAN :

We beg to state that on the basis of an examination of our cost accounting records, together with a review of the competitive quotations now available in all areas except Harvard, Illinois, taking into consideration our expense of sales, delivery, customer service and collection to your concern, when compared with the general average of such costs falling outside of the so-called chain store category, justify a discount to you on our products in the amount of 11%, effective Tuesday, June 1, 1954.

Yours very truly, Bowman Dairy Company, F. H.  
Kullman, Jr., President.

FHKJr:CEG

DR Nelson

6 17 54

Bowman Dairy Company  
The Milk of Superior Flavor  
Head Office—140 W. Ontario Street  
Telephone SUPERior 7-6800  
Chicago 10, Illinois

May 28, 1954.

Mr. E. C. Brunst, Jr.  
The Kroger Company  
8235 Vincennes Avenue  
Chicago 20, Illinois

Dear Ed:

Confirming our telephone conversation of today, our discounts will be adjusted as of June 1, 1954.

Thereafter, we will allow a discount of 11 Percent on your purchases of dairy products in All Areas except Progressive Dairy in Racine.

Our regular advertising allowances remain the same— $1\frac{1}{2}$  of 1 Percent for Proof Advertising.

Very truly yours, Bowman Dairy Company, Roy W.  
Bushman, General Sales Manager.

RWB:BPM  
CC: A. H. Kramer





# GORAND'S STREET MAP OF CHICAGO AND SUBURBS

SCALE OF MAPS: 1 INCH = 2000 FEET  
EACH PAGE SHOWS 9 SQUARE MILES (3 MILES x 3 MILES)

## LEGEND

|   |       |
|---|-------|
| C.T.A. CAR LINE                                     | ----- |
| C.T.A. TROLLEY BUS LINE                             | ----- |
| C.T.A. GAS BUS LINE                                 | ..... |
| C.T.A. RAPID TRANSIT LINE AND STATION               | ----- |
| C.T.A. SUBWAY LINE AND STATION                      | ----- |
| C.T.A. CAR LINE AND RAPID TRANSIT LINE              | ----- |
| C.T.A. CAR LINE AND SUBWAY LINE                     | ----- |
| C.T.A. CAR LINE, RAPID TRANSIT LINE AND SUBWAY LINE | ----- |
| RAILROAD AND PASSENGER STATION                      | ----- |
| SUBURBAN BUS LINE                                   | ----- |
| UNDERPASS   | ----- |
| GRADE CROSSING                                      | ----- |
| OVERPASS  | ----- |
| PEDESTRIAN SUBWAY OR BRIDGE                         | ----- |

|                    |       |
|--------------------|-------|
| CHICAGO CITY LIMIT | ----- |
| VILLAGE LIMIT      | ----- |
| SECTION LINE       | ----- |
| HOUSE NUMBERS      | 3400  |

## ABBREVIATIONS

|                 |      |
|-----------------|------|
| CEMETERY        | CEM. |
| FOREST PRESERVE | F.P. |
| HIGH SCHOOL     | H.S. |
| PARK            | PK.  |
| PARKWAY         | PKY. |
| PLAYGROUND      | PG.  |

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© COPYRIGHT 1951 CHICAGO TRANSIT AUTHORITY,

MAP REVISED: SEPTEMBER 1, 1950  
C.T.A. ROUTES REVISED: DECEMBER 1, 1950

3900

3900

4700

4700

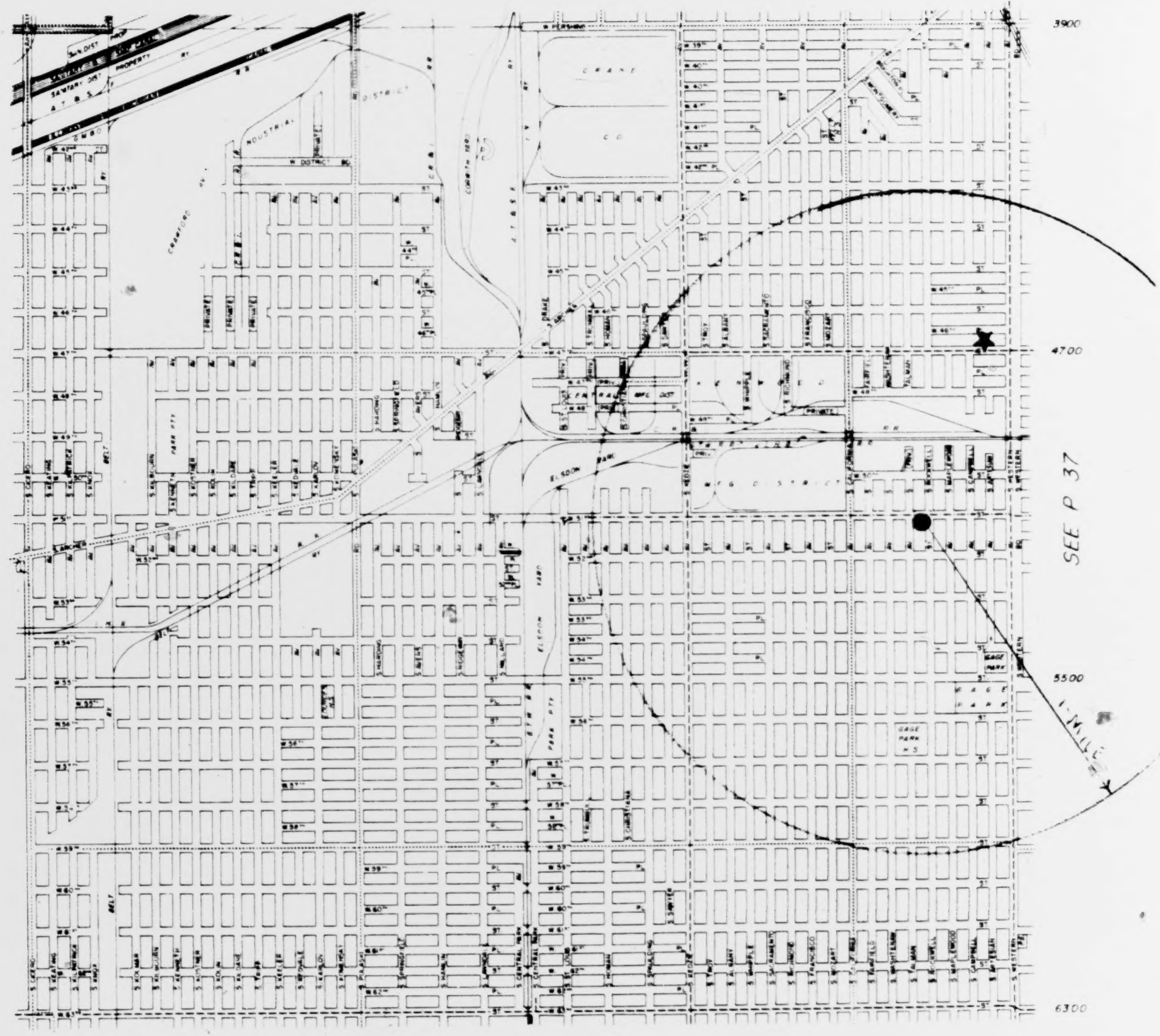
5500

5500

6300

SEE P 35

SEE P 37



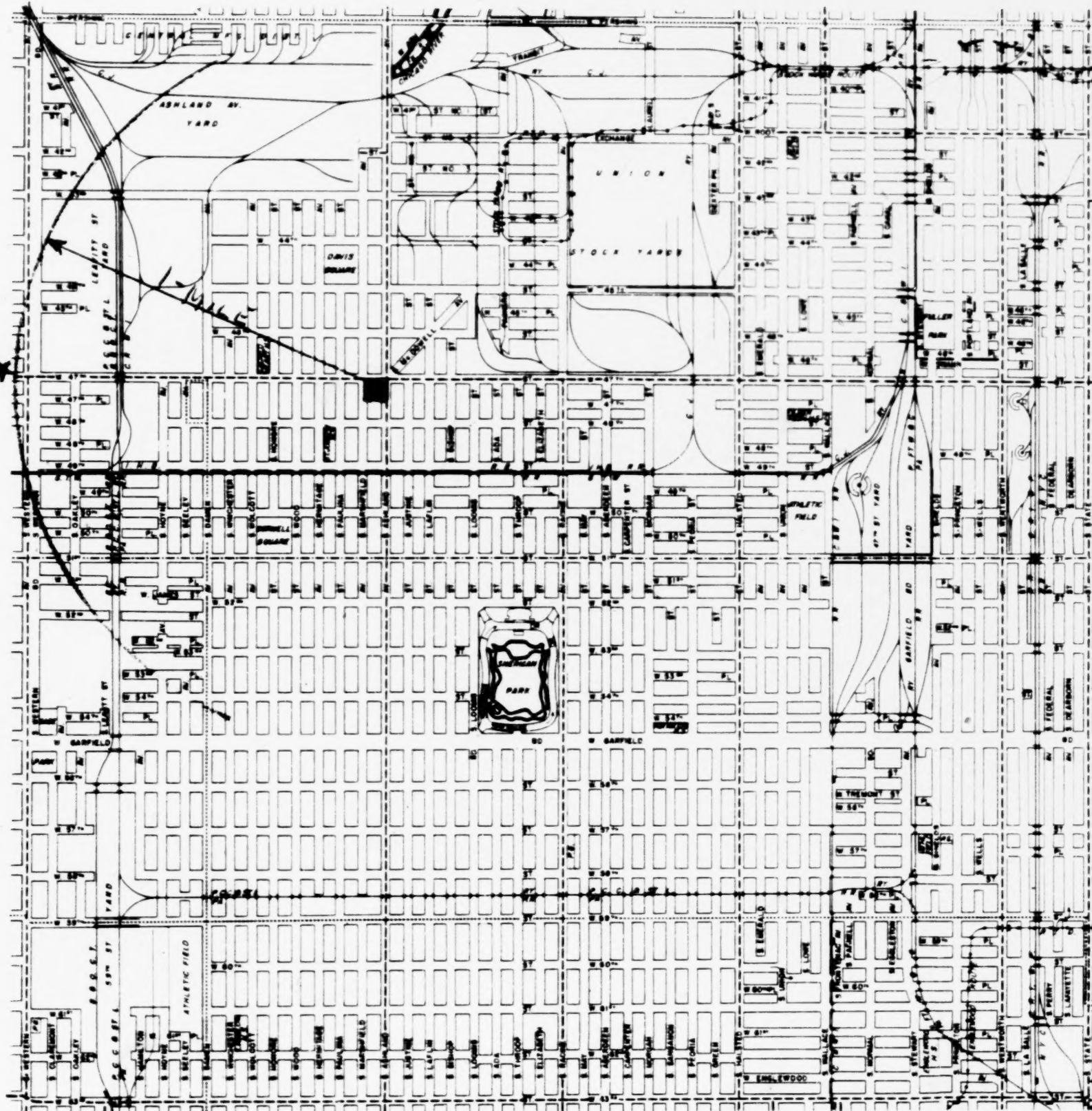
3900

4700

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6300

SEE P. 36



3900

4700

5500

6300

SEE P. 38



Legend:

A & P stop ●

Kroger stop ■

Charlie's Market stop ★

1/4  
1/2  
3/4  
1

43

74

[fol. 465d]

6300

6300

7100

7100

7900

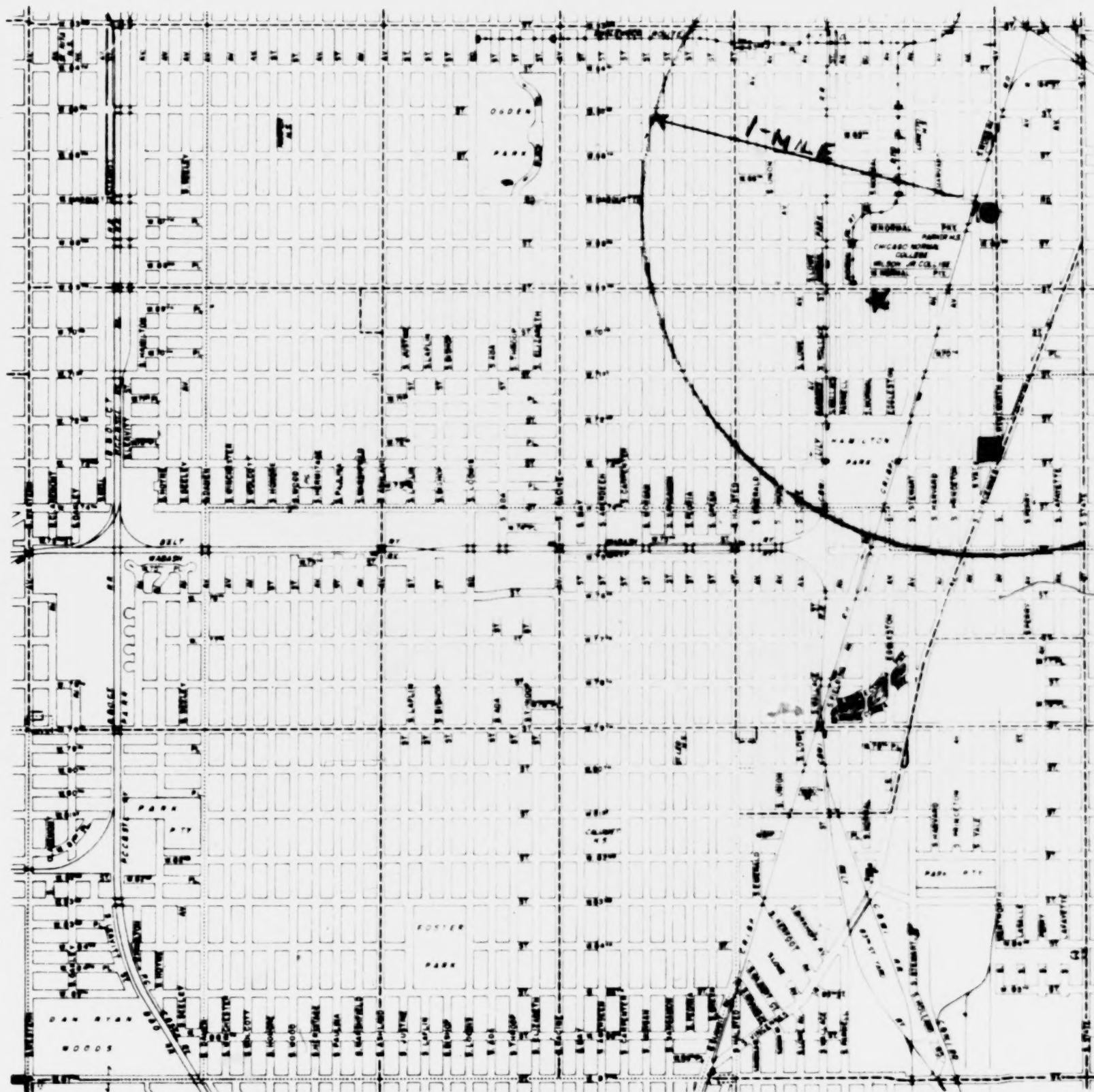
7900

8700

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SEE P. 42

SEE P. 44





[fol. 466] IN UNITED STATES DISTRICT COURT, NORTHERN  
DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 51 C 947

[Title omitted]

SUPPLEMENTAL PRE-TRIAL ORDER AS TO THE BORDEN COMPANY  
November 8, 1955

The Court, pursuant to Rule 16 of the Federal Rules of Civil Procedure, having directed the attorneys for the parties to appear before it for a pre-trial conference concerning the evidence to be offered upon the reopening of this action; the Court having set September 26, 1955 as the date for said conference; the Court having met with counsel for the parties on said September 26 and from time to time thereafter; and the plaintiff and the defendant The Borden Company (hereinafter called "Borden") having come to certain agreements in the course of said conferences,

It is ordered:

1. This order is a supplement to the Pre-Trial Order entered in this action on March 4, 1953;

[fol. 467] 2. This order pertains only to the plaintiff and the defendant Borden;

3. The introduction of evidence under any and all of said agreements is made without agreement as to the weight of such matters and subject to the objection reserved by the plaintiff and the defendant Borden that the evidence sought to be introduced is immaterial or irrelevant, and the same reservation and objection shall apply to all stipulations, agreements and admissions of fact contained in this order;

4. This supplemental pre-trial order and all matters herein referred to and all admissions of fact and agreements with respect to the further trial of this action shall be used for no other purpose than the trial of this action and are made solely for the purposes of this trial.

### Agreements as to Facts and Exhibits

1. "Borden's Milk Discount Schedule to Grocers, Effective Tuesday, June 1, 1954," marked for identification as Exhibit A, may be offered in evidence without further proof or authentication.

2. For purposes of this cause, the term "fresh milk products," as used hereinafter, includes not only fluid milk, as described in Section I, paragraph 5, of the Pre-Trial Order of March 4, 1953, but the other milk products listed in Exhibits A and D, together with similar items occasionally sold by Borden.

[fol. 468] 3. Exhibit A was used as the basis for computing discounts upon all sales of all fresh milk products, including fluid milk, made by Borden to independently owned store customers in the Chicago area during the period from June 1, 1954 through August 28, 1955. The March 1955 and December 1954 discounts paid to the independently owned store customers listed on Schedules I and II attached hereto were computed and paid in accordance with Exhibit A, with the exception of the discounts paid to customers Popik, Schubert, and Arthur Cartan listed on Schedule II. These three customers were given  $1\frac{1}{2}$  per cent more than the percentage discounts which they would otherwise have received under Exhibit A.

4. The letter from Borden to the Great Atlantic & Pacific Tea Company (hereinafter called "A & P"), dated June 4, 1954, marked for identification as Exhibit B, may be offered in evidence without further proof or authentication. This letter was used as the basis for computing discounts upon all sales of fresh milk products by Borden to the A & P stores served by Borden's Chicago Milk Division in the Chicago area and in other parts of Illinois during the period June 1, 1954 through August 21, 1955, including the March 1955 and December 1954 sales to the A & P stores listed on Schedules I and II attached hereto.

5. The letter from Borden to The Jewel Food Stores (hereinafter called "Jewel"), dated June 4, 1954, marked for identification as Exhibit C, may be offered in evidence [fol. 469] without further proof or authentication. This letter was used as a basis for computing discounts upon all sales of fresh milk products by Borden to Jewel stores served by Borden's Chicago Milk Division in the Chicago



area and in other parts of Illinois during the period June 1, 1954 through August 21, 1955, including the December 1954 sales to the Jewel stores listed on Schedule II attached hereto.

6. During March 1955, Borden sold fluid milk to the store customers listed on Schedule I attached hereto, as well as to all of its other store customers in the Chicago area, at the same unit selling prices, and during the following month Borden paid the independently owned store customers listed on Schedule I attached hereto the discounts shown on the schedule.

7. During December 1954, Borden sold fluid milk to the store customers listed on Schedule II attached hereto, as well as to all of its other store customers in the Chicago area, at the same unit selling prices, and during the following month Borden paid the independently owned store customers listed in Schedule II attached hereto the discounts shown on the schedule.

8. All of the store customers listed on Schedule I attached hereto were regularly served on the same milk route, Borden Milk Route No. 25-W, during the month of March 1955.

9. The attached charts entitled "Borden Store Customers on Route 25-W for March 1955," and "Borden Store Customers on Routes 181, 155 and 145 for December 1954," and [fol. 470] marked as Schedules I and II respectively, may be offered in evidence without further proof or authentication.

10. The fluid milk referred to in Schedules I and II attached hereto was uniform in chemical and physical properties between said customers.

11. The store customers listed on Schedules I and II are not all of the store customers served by Borden on its Routes 25-W, 181, 155 and 145.

12. The form letter of Borden addressed to "Dear Grocer," dated August 29, 1955, marked for identification as Exhibit D, may be offered in evidence without further proof or authentication.

13. The prices charged independently owned store customers in the Chicago area by Borden during the month of September 1955 were the prices listed on Exhibit D, and these prices were charged by Borden during September to

the independently owned store customers listed on Schedules I and II attached hereto. No discounts or rebates were paid by Borden to the independently owned store customers listed on Schedules I and II attached hereto with respect to September 1955 sales to such customers except that customers Popik, Schubert and Arthur Cartan received a  $1\frac{1}{2}$  per cent discount. On September 16, 1955, William D. Boyenzo closed his store at 1001 South Marshfield.

14. The letter from Borden to A & P dated August 29, 1955, a true copy of which is marked for identification as [fol. 471] Exhibit E, and the attachment thereto, a true copy of which is marked as Exhibit F, may be offered in evidence without further proof or authentication.

15. The prices charged A & P in the Chicago area and the Chicago suburban areas during the month of September 1955 are the prices listed on Exhibit F. During September 1955, Borden made deliveries to the A & P stores listed on Schedules I and II attached hereto, except that the A & P store at 2420 West 63rd Street was closed on September 26, 1955. As stated on Exhibit E, these prices were net prices without rebate or discount.

16. The attached chart entitled "Borden Downtown Chicago Accounts—March, 1955," Schedule III, may be offered in evidence without further proof or authentication.

17. The classes and units of fluid milk referred to in Schedule III may have been sold and delivered in different types and sizes of containers, but said classes and units of fluid milk were uniform in chemical and physical properties as between the customers referred to in Schedule III.

18. The sales of fluid milk to the restaurants and hotels listed on Schedule III include sales which were delivered in round dispenser cans designed to be placed in milk-dispensing cabinets of a design meeting the specifications of the applicable state statute and city ordinances. With respect to these dispenser cans, the applicable health statutes and ordinances require a variety of manual operations, and require that the seals be left intact on these cans by the [fol. 472] restaurant or hotel customer until returned to the defendant. These seals must then be broken and removed by hand labor. These cans are generally of three, five or ten gallon capacities and are fitted at the bottom with either a plastic rubber or metal tube which protrudes

through an external shutoff valve in the dispenser cabinet. The plastic rubber tubes can only be used once and cost about 5 cents each; whereas the metal tubes can be sterilized and reused.

19. The locations of the places of business of the Borden customers referred to or reported on Schedules I, II, and III are marked on a copy of Gorand's 1951 Edition City Map of Chicago and Suburbs, which map is attached hereto as Schedule IV. This map may be received in evidence without further proof or authentication.

Enter:

[Copy illegible] United States District Judge.

[fol. 473]

#### SCHEDULE I

Borden Store Customers on Route 25 W for March 1955

| Borden Wholesale Store Customer          | Total Dollar Volume for Month <sup>1</sup> | Per Cent Discount    | Amount of Discount   |
|--|--|----------------------|----------------------|
| A & P<br>2328 W. Roosevelt Rd.           | \$955.08                                   | 8 1/2 % <sup>1</sup> | \$81.18 <sup>1</sup> |
| Joe Guarnarino<br>1910 W. Polk Street    | 508.60                                     | 3 %                  | 15.26                |
| Carmen Gargano<br>1517 W. Polk Street    | 786.98                                     | 3 %                  | 23.61                |
| A & P<br>2350 W. Harrison St.            | 776.50                                     | 8 1/2 % <sup>1</sup> | 63.00 <sup>1</sup>   |
| F. Gargi<br>2325 W. Taylor St.           | 817.99                                     | 3 %                  | 24.54                |
| William D. Boyenzo<br>1901 S. Marshfield | 697.38                                     | 3 %                  | 20.92                |

<sup>1</sup> A discount of 8 1/2 % (Exhibit B) was paid by Borden to A & P on the basis of the total sales of fresh milk products to all A & P stores served by Borden's Chicago Milk Division in the Chicago area and in other parts of Illinois, which total sales include the dollar value of Borden's direct deliveries to these stores.

[fol. 474]

## SCHEDULE II

Borden Store Customers on Routes 181, 155, 145 for December 1954

| Route No. | Borden Wholesale Store Customer       | Total Dollar Volume for Month | Per Cent Discount | Amount of Discount  |
|-----------|---------------------------------------|-------------------------------|-------------------|---------------------|
| 181       | Savatis<br>2515 W. 69th St.           | \$1,165.35                    | 4%                | \$ 46.61            |
| 181       | Popik<br>2913 W. 63rd St.             | 1,188.18                      | 4% plus 1½%       | 65.35               |
| 181       | Schubert<br>2610 W. 71st St.          | 4,082.90                      | 4% plus 1½%       | 224.56              |
| 155       | A & P<br>6740 S. Western Ave.         | 2,941.38                      | 8½% <sup>1</sup>  | 250.02 <sup>1</sup> |
| 155       | Arthur Cartan<br>6653 S. Ashland Ave. | 1,312.18                      | 4% plus 1½%       | 72.17               |
| 145       | A & P<br>2420 W. 63rd St.             | 2,173.10                      | 8½% <sup>1</sup>  | 184.71 <sup>1</sup> |
| 145       | Jewel<br>2454 W. 63rd St.             | 2,947.47                      | 8½% <sup>2</sup>  | 250.53 <sup>2</sup> |

<sup>1</sup> A discount of 8½% (See Exhibit B) was paid by Borden to A & P on the basis of the total sales of fresh milk products to all A & P stores served by Borden's Chicago Milk Division in the Chicago area and in other parts of Illinois, which total sales include the dollar value of Borden's direct deliveries to these stores.

<sup>2</sup> A discount of 8½% (See Exhibit C) was paid by Borden to Jewel on the basis of the total sales of fresh milk products to all Jewel stores served by Borden's Chicago Milk Division in the Chicago area and in other parts of Illinois, which total sales include the dollar value of Borden's direct deliveries to this store.

## SCHEDULE III

Borden's Downtown Chicago Accounts—March 1955

| Name and Address of Account                        | Total Dollar<br>Volume of<br>Purchases of<br>all Fresh Milk<br>Products <sup>1</sup> | Milk                           |                 | 1/2 Pints<br>Price per<br>1/2 Pint | 187 7/8<br>Price per<br>Gallon | Cream               |         | Half and Half<br>Price per<br>Gallon |
|--|--|--------------------------------|-----------------|------------------------------------|--------------------------------|---------------------|---------|--------------------------------------|
|  |  | Dispenser<br>Price<br>per Gal. | No.<br>1/2 Pts. |                                    |                                | Price per<br>Gallon | Gallons |                                      |
| 1. Bolling's Restaurant<br>205 W. Wacker Dr.       | \$ 758.63  | 634                            | —               | —                                  | —                              | —                   | 175     | 1.5757                               |
| 2. Bolling's Restaurant<br>228 N. La Salle St.     | 787.91   | 634                            | 552             | 054                                | —                              | —                   | 169     | 1.5757                               |
| 3. Bolling's Restaurant<br>111 W. Washington St.   | 654.80   | 634                            | —               | —                                  | —                              | —                   | 148     | 1.5757                               |
| 4. George's Restaurant<br>75 E. Washington St.     | 1,315.91   | 72                             | —               | —                                  | —                              | —                   | 192     | 2.04                                 |
| 5. O'Connell's Restaurant<br>107 W. Monroe St.     | 451.01   | —                              | 4,080           | 0493                               | —                              | —                   | 126     | 1.5386                               |
| 6. George's Restaurant<br>208 S. La Salle St.      | 1,158.74   | 305                            | —               | —                                  | —                              | —                   | 176     | 2.04                                 |
| 7. Congress (Pick) Hotel<br>Congress & S. Michigan | 2,500.35   | —                              | 12,480          | 055                                | —                              | 2.60                | 448     | —                                    |
| 8. Harvey Restaurant<br>Union Station              | 2,000.92   | 74                             | 2,000           | 065                                | —                              | 3.14                | 524     | —                                    |

<sup>1</sup> Includes all other fresh milk products in addition to those itemized on this schedule purchased from Borden for these locations.

[fol. 476]

## EXHIBIT A

## Borden's Milk Discount Schedule to Grocers

Effective Tuesday, June 1, 1954

The following discount schedule will be applied to all purchases of Borden's fresh milk products.

| Average converted<br>units per day | % Discounts |
|------------------------------------|-------------|
| 0 - 24                             | 0           |
| 25 - 74                            | 2           |
| 75 - 149                           | 3           |
| 150 and over                       | 4           |

## Discounts Will be Computed as Follows

1. Your total monthly purchases of Borden's fresh Milk products will be converted to units. This total will be divided by the number of days during the month that our trucks are on the street making normal store deliveries. This figure becomes your average converted units per day.
2. From your average converted units per day your discount can be found from the above discount schedule.
3. Your discount for the month will then be applied to your total dollar purchase of Borden's fresh milk products.

|                                | Units |                    | Unit |
|--------------------------------|-------|--------------------|------|
| Gallons                        | 4     | Buttermilk         | 1    |
| $\frac{1}{2}$ Gals.            | 2     | Half & Half        | 1    |
| $\frac{1}{2}$ Gal. Zest        | 2     | Rich Cream         | 1    |
| $\frac{1}{2}$ Gal. Gail Borden | 2     | Whipping Cream     | 1    |
| Qts. Milk                      | 1     | Sour Cream         | 1    |
| Skimmed Milk                   | 1     | Cottage Cheese     | 1    |
| Chocolate Drink                | 1     | Triple & Reddi Wip | 1    |
|                                |       | Yogurt             | 1    |

Discount checks will be mailed to you during the month following the month in which they were earned.

This Discount Schedule Applies to Borden-Owned Chicago Area Routes Only.

The Borden Company, Chicago Milk Division, 3638  
Broadway, Chicago 13, Illinois.

[fol. 477]

## EXHIBIT B

June 4, 1954.

The Great A & P Tea Company,  
2622 N. Pulaski Avenue,  
Chicago, Illinois.

GENTLEMEN :

This is to advise you that we are changing our discount to you effective Tuesday, June 1, 1954 on your purchase of milk and certain dairy products in the Chicago area.

Prior to June 1, 1954, our discount to you was  $8\frac{1}{4}\%$ . Effective June 1, 1954, our discount to you will be  $8\frac{1}{2}\%$ .

We are also enclosing a copy of our new price schedule effective retroactive to June 2, 1954.

We are prepared to establish the legality of the discount offered to you.

Very truly yours, The Borden Company, Chicago  
Milk Division, Harold Fagerson, Vice President.

HRF:SP  
Encl.

[fol. 478]

## EXHIBIT C

The Borden Company—Chicago Milk Division  
3638 Broadway, Chicago 13, Ill.

Notice of Change In Discount Rate Effective 6/1/54

June 4, 1954.

Mr. E. A. Miller,  
The Jewel Food Stores,  
3617 S. Ashland Avenue,  
Chicago 9, Illinois.

DEAR MR. MILLER:

This is to advise you that we are changing our discount to you effective Tuesday, June 1, 1954 on your purchase of milk and certain dairy products in the Chicago area.

Prior to June 1, 1954, our discount to you was  $8\frac{1}{4}\%$ . Effective June 1, 1954, our discount to you will be  $8\frac{1}{2}\%$ .

We are also enclosing a copy of our new price schedule effective retroactive to June 2, 1954.

We are prepared to establish the legality of the discount offered to you.

Very truly yours, The Borden Company, Chicago  
Milk Division, Harold Fagerson, Vice President.

HFR:SP

Encl.

[fol. 479]

# EXHIBIT D

The Borden Company—Chicago Milk Division  
3638 Broadway, Chicago 13, Ill.

August 29, 1955.

DEAR GROCER:

Effective August 29, 1955, our prices to you will be as follows:

|  |             |
|--|-------------|
| Gals. Homo V.D. Milk   | 67          |
| Qts. Homo V.D. Milk  | 18          |
| $\frac{1}{2}$ Gals. Homo V.D. Milk                             | 35          |
| $\frac{1}{2}$ Gals. Gail Borden Signature Quality Milk "Glass" | 37          |
| $\frac{1}{2}$ Gals. Zest Modified Skim Milk "Paper"            | 325         |
| Qts. Chocolate Drink   | 23          |
| $\frac{1}{2}$ Pts. Chocolate Drink, Handi-Pak                  | 75 per doz. |
| Qts. Vitamin Fortified Skim Milk                               | 17          |
| Qts. Buttermilk  | 18          |
| Qts. Strawberry Drink  | 28          |
| Pts. Rich Cream  | 54          |
| $\frac{1}{2}$ Pts. Rich Cream                                  | 275         |
| 12 Oz. Sour Cream  | 375         |
| 8 Oz. Sour Cream   | 25          |
| Pts. Half & Half   | 27          |
| $\frac{1}{2}$ Pts. Whipping Cream                              | 29          |
| Borden's Triple Whip or Reddi-Wip—7 Oz. Can                    | 42          |
| 8 Oz. Creamed Cottage Cheese (plain)                           | 16          |
| 12 Oz. Creamed Cottage Cheese (plain)                          | 21          |
| 16 Oz. Creamed Cottage Cheese (plain)                          | 24          |
| 8 Oz. Chive Creamed Cottage Cheese                             | 17          |
| 12 Oz. Chive Creamed Cottage Cheese                            | 22          |
| 16 Oz. Chive Creamed Cottage Cheese                            | 25          |
| 8 Oz. Pineapple Creamed Cottage Cheese                         | 18          |
| 12 Oz. Pineapple Creamed Cottage Cheese                        | 23          |
| 16 Oz. Pineapple Creamed Cottage Cheese                        | 26          |
| Dry Curd Cheese (12 Oz.)                                       | 22          |
| Yogurt (8 Oz.)   | 185         |

## Glass Bottle Deposit

- 15—Gallon Bottles
- 06— $\frac{1}{2}$  Gallon Bottles
- 03—Quarts, Pints and  $\frac{1}{2}$  Pints



These prices will be net prices without rebate or discount, or advertising allowances. Our bottle service credit as announced in our letter of December 10, 1953, is discontinued.

Very truly yours, The Borden Company, Chicago  
Milk Division, W. L. Hedin, General Sales Manager.

WLH/bal

[fol. 480]

EXHIBIT E

Copy

August 29, 1955.

The A & P Food Stores,  
2622 North Pulaski Road,  
Chicago, Illinois.

GENTLEMEN :

Attached hereto is a list of our prices to you covering deliveries to your stores located in Chicago and the Chicago Suburban areas which become effective August 29, 1955.

These prices will be net prices without rebate or discount, or advertising allowance.

Our bottle service credit as announced in our letter of December 10, 1953, is discontinued.

We are prepared to justify our prices to you.

Very truly yours, The Borden Company, Chicago  
Milk Division, —, —, President.

WNW :lm  
Atch.

[fols. 481-533]

## EXHIBIT F

The A &amp; P Food Stores

Effective August 29, 1955

Chicago &amp; Chicago Suburban Area

|   | Net Cost |
|---|----------|
| Gals. Homo V.D. Milk                                  | 62       |
| Qts. Homo V.D. Milk                                   | 166      |
| $\frac{1}{2}$ Gals. Homo V.D. Milk                    | 324      |
| $\frac{1}{2}$ Gals. Gail Borden (Glass)               | 342      |
| Qts. Softkurd   | 239      |
| Qts. Golden Crest Milk                                | 297      |
| Qts. Chocolate Drink                                  | 212      |
| $\frac{1}{2}$ Pts. Chocolate Drink (Handi-Pak) (Doz.) | 664      |
| $\frac{1}{2}$ Pts. Chocolate Drink                    | 055      |
| Qts. Buttermilk                                       | 166      |
| Qts. Rich Cream                                       | 912      |
| $\frac{1}{2}$ Pts. Rich Cream                         | 243      |
| 12 Oz. Sour Cream                                     | 34       |
| 8 Oz. Sour Cream                                      | 231      |
| Pts. Half & Half                                      | 25       |
| $\frac{1}{2}$ Pts. Whipping Cream                     | 268      |
| Borden's Yogurt                                       | 17       |
| Qts. Vit. Fortified Skim                              | 157      |
| Borden's Triple Whip                                  | 388      |
| Qts. Strawberry Drink                                 | 248      |
| $\frac{1}{2}$ Gal. Carton Zest Milk                   | 30       |
| 8 Oz. Creamed Cottage Cheese (Plain)                  | 148      |
| 16 Oz. Creamed Cottage Cheese (Plain)                 | 222      |
| 2 Lb. Cottage Cheese                                  | 388      |

## Glass Bottle Deposit

- 15—Gallon Bottles
- 06— $\frac{1}{2}$  Gallon Bottles
- 03—Quarts, Pints and  $\frac{1}{2}$  Pints

[fol. 534] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT  
OF ILLINOIS, EASTERN DIVISION

No. 51 C 947

[Title omitted]

**Transcript of Proceedings of April 20, 1956**

Transcript of proceedings had at the pre-trial conference in the above-entitled cause before Honorable William J. Campbell, one of the Judges of said Court, in his jury room, United States Courthouse, Chicago, Illinois, on Friday, April 20, 1956, at 2:00 o'clock p.m.

**PRESENT:**

Mr. Bertram Long, Mr. Thomas Kerr, and Mr. Elliott B. Wooley, Appeared on behalf of the Government;

Mr. Edward L. Hart, Jr. and Mr. John P. Stevens, Appeared on behalf of the defendants Bowman Dairy Company and Ridgeview Farms Dairy, Inc.;

Mr. Stuart S. Ball, Mr. H. Blair White, and Mr. Joseph Greaves, Appeared on behalf of defendants The Borden Company and Belmont Dairy Company.

[fol. 535] Mr. Kerr: Mr. Jinkinson sends his regrets that he will not be able to be here today.

The Court: Where is he?

Mr. Kerr: He has been called down to Danville, Illinois.

The Court: What is he doing down there?

Mr. Kerr: A Grand Jury investigation.

The Court: How are we doing here without the Court in the meanwhile, gentlemen? I hope you have got it all taken care of without me.

Mr. Ball: If the Court would be interested in a progress report?

The Court: I would like to hear it, yes. Do you mind if Mr. Ball states that?

Mr. Kerr: I think they are carrying the laboring oar.

The Court: As I left it, they had the laboring oar.

STATEMENT BY MR. BALL, COUNSEL FOR DEFENDANTS ON THE  
BORDEN COST STUDY AND COLLOQUY THEREON

Mr. Ball: Now, in the first matter that I would like to report to the Court it was about four weeks ago, I think, we handed to the Government a proposed pre-trial order covering the cost defense of the Borden Company and this copy would be available to the Court.

The Court: Thank you very much.

Mr. Ball: I would like for the Court's benefit just to make a word of explanation of the same kind, Mr. Kerr, that I [fol. 536] made to you gentlemen when I gave the document to you because I think it will help the Court to understand something of the work which now devolves upon your shoulders and explain something of the time it took to prepare it.

This study, this order represents and reports upon the cost study that was made in July or August of last summer, and it has taken practically all of the time since then to get the material analyzed in such a way that it could be presented in an understandable form to the Government and to the Court.

What was done was that every one of the wholesale routes operated by the Borden Company out of the Englewood and Irving Park branches which includes all of the wholesale routes operated by Borden Company, store wholesale routes in the Chicago area, were surveyed, each for an entire week's operation.

The store wholesale routes that were covered, well over one hundred and thirty, represent practically all of the important store wholesale customers served by Borden in the City of Chicago. There are a few scattered store wholesale customers that are out of the ordinary area and who are served by the retail routes.

[fol. 537] The Court: Yes.

Mr. Ball: But they are, I think, an infinitesimal factor, and I think there are other reasons why that may be safely disregarded in looking at the picture of costs.

Now, what was done was that men were picked and trained with stop watches to spend a week on each route. The study took a period of five weeks and about one-fifth of these routes were studied in each of the five weeks.

The Court: Yes.

Mr. Ball: The men with the stop watch come to work with the driver in the morning, and he would get timed the various activities that were performed by the driver, and he was provided with a book of forms. These forms are attached as sample exhibits, or pre-trial exhibits, the pre-trial report. Each of these forms specified in very considerable detail types of work that were performed by the drivers on these routes and as the driver performed each task each day by means of a stop watch to the nearest minute the time was recorded on these sheets in pencil.

The survey sheets themselves as so prepared, have been collected together and are identified in this draft of an [fol. 538] order as a bulk exhibit and are available for inspection. They comprise raw data.

In some less detail cost studies were also made of certain other activities, such as time spent in the billing of credit to store customers and certain other home office activity that clearly relate directly to the delivery of the products to the store.

No attempt was made to get at differences of cost of production or any of the costs up to the point that the milk left the bulk plant to be delivered and the overhead cost was directly related to those activities.

As the result of the compilation of this data it was necessary to put it in some form of comprehensible order. Punch cards were prepared for IBM power equipment covering a substantial—well, most of the data from the surveys of the individual routes.

In addition as a check the Haskins themselves, who were the public accountants for the Borden Company with their staff worked on manual preparations of certain summary sheets issued upon the data so that the result of the computation made by the IBM cards could be checked against [fol. 539] the cards manually prepared by the Haskins people themselves.

Now, what we have attempted to do in this pre-trial order is to draw no conclusions, to state no opinions whatsoever but to state (1) exactly what the activities were that were surveyed; (2) describe the method by which the surveys were made step by step, to identify the documents

used, to identify the bulk exhibits which include, not only these first data sheets, but the punch cards, the data manually prepared by the Haskins people themselves.

To set out next in the pre-trial order those figures which appear on the books of record of the company that have some pertinence, either as directly applicable—

The Court: Yes.

Mr. Ball—to these costs, or as a comparable basis by which the results obtained through the computations of the cards could be checked against the company records, as a matter of comparison for accuracy.

We have attempted then to set forth the purely arithmetical results of certain kinds of computations, and have described the method by which in the making of those computations certain allocations have been made. No attempt [fol 540] has been made to draw from those schedules any conclusions as to relative costs by customers at all, because we feel that the conclusions that we will argue and the conclusions that the Government will argue are purely arithmetical deductions to be made from this basic data.

We have a feeling, therefore, that what we were trying to do is to put forth just the amount in the pre-trial order that would enable the Government by checking the bulk exhibits against the schedules to accept the schedules as a correct arithmetical summary of the bulk exhibits, so that for purposes of actual trial the bulk exhibits, if they met with that approval, might drop out of the record if the schedules themselves received the approval after checking by the Government.

The Court: Yes.

Mr. Ball: We would assume that if this material stands up under checks by the Government and the facts are verified, there would be no necessity on our part to call any witness at all in connection with our cost defense but all of the conclusions would be a matter of brief argument to be submitted to the Court.

Now, we would like to regard the statement of these paragraphs in sequence as if it were the testimony of Mr. [fol. 541] Malone, because Mr. Malone was the officer of the Borden Company who was designated to do the survey so that everything described in here was either done by Mr. Malone personally or done under his supervision and

direction. So that we are perfectly willing to bring Mr. Malone in at any time as the Government understands.

The Court: For cross examination.

Mr. Ball: For cross examination with no idea that Mr. Malone would have to be called to the stand eventually.

The Court: No, for cross examination by them for explanation of anything that appears in the order.

Mr. Ball: Now, we would assume that the Government is perfectly free to inquire for additional data from our books of record or additional documents or anything that might bear upon these matters, to question any others connected with the survey as to the details in which the work was done and to prepare, if they desire, other arithmetical schedules that might summarize some data that they feel otherwise is omitted or not presented in usable form in the order.

I am sure that that again is to be approached on our part and their part in exactly the same way that we ap- [fol. 542] proached the matter before.

It is a very interesting thing I think, as Mr. White was pointing out to me, as I started this explanation, that at the very end of our proposed pre-trial order on Page 86 we set forth the fact that this has cost the Borden Company, exclusive of attorneys' fees, the sum of \$43,106.

Now, I mention that not for any other reason than its significance generally, it seems to me, to the Court and to the Government, and to counsel, as some indication of the problems that are presented under a Robinson-Patman Act type of legislation because if there is any significance that this figure has, it is that it is impossible every time you make a quotation of prices and price change to go out and make a cost survey contemporaneous with it to support the judgment.

Mr. Greaves: I understand we are going to get a bill for \$7,000 additional from Haskins.

The Court: So that it will run well over fifty. I certainly commend you for what you have done. I want to read this carefully at my leisure, but certainly it has given you something to start on, I should think.

[fol. 543] Mr. Kerr: It has, your Honor.

The Court: I am very appreciative of your efforts here.

Mr. Kerr: If Mr. Hart will permit, let us talk to Borden

first while we have that before us. Then we can talk about that.

Mr. Ball: There has been also a presentation by Bowman but what I wanted to add to the Court is I know from the experience we have had in just the chore of digesting and presentation that we have put a very heavy burden on the shoulders of the Government again. I know Mr. Wooley has a job ahead of him, and I merely bespeak on their behalf so that the Court's patience that you have already exhibited to us in the affirmative that we are going to get two things is the result of this approach to our cost studies. In the first place, it is an immeasurable saving of trial time.

The Court: Yes.

Mr. Ball: But more than that a comprehension of the facts in the record for the benefit of the Court and of all parties concerned that I think will tend to focus our attention on the real issues.

The Court: A comprehension that would not be readily [fols. 544-547] obtained from the day by day presentation of the evidence.

Mr. Ball: Exactly.

. . . . .

[fol. 548] Mr. Ball: With this material and with the matters that I have outlined if we are successful in what we think we can at least visualize being done, we will be able, I think, to rest subject to such rebuttal evidence, Government rebuttal evidence, without the necessity of any witnesses in the trial.

The Court: Well, I certainly want to express my appreciation, not only to you, but to the Government counsel as well, for your cooperative efforts in this regard.

Mr. Ball: Government counsel has been exceedingly co-[fol. 548a] operative.

The Court: You have saved a great deal of the Court's time. My work will start, of course, when you people finish.

Mr. Kerr: We appreciate that.

The Court: I can see now my summer vacation disappear into thin air. As I gather your timetable, you are going



to dump all of this in my lap just about the time I thought I was going to adjourn and take two months' rest.

Mr. Wooley: If you take two months, maybe we can adjust it accordingly.

The Court: That might be a good idea, except I have a lot of cases set for the Fall. Perhaps I better spend my summer on the milk business.

Now, do we want to hear from Bowman?

STATEMENT BY MR. KERR, COUNSEL FOR GOVERNMENT,  
AND COLLOQUY THEREON

Mr. Kerr: On the Borden, while we have it before us, I would like to say that with respect to everything that Mr. Ball has offered us before the cost study, I think his Honor should know, we are in substantial agreement.

Mr. Ball: It is to complete that.

Mr. Kerr: That is right. That material was in the hands of Borden counsel for redrafting in a form which we expect will be satisfactory to us.

[fol. 549] The Court: Very good.

Mr. Kerr: With respect to the cost study which we have now had for a couple of weeks, we want to bring up something that was discussed here a few, well, a few meetings ago. We spoke to your Honor about the matter of the relevancy of a substantial portion of evidence being discussed before a large undertaking of work upon that matter was begun. We said that if it came to a point where there was something that we felt was relevant, could we bring it forward and ask your Honor what his ruling would be about it before we undertook many weeks of statistical work.

With respect to the Borden cost study, and we do not wish this to be decided in any way today, we want to say to the pre-trial conference that we think this is a matter that both sides will want to research and then perhaps discuss before your Honor.

With respect to the Borden cost study, as far as we can determine from studying it, all of the data, all of the raw data contained therein was obtained after this proceeding was begun in this last phase. In other words, all of the cost justification material and determination was made

after the allegation of price discrimination and the particular customers who had been discriminated against had been singled out.

[fol. 550] Now, we wish the question to be considered by your Honor as to whether cost justification material which is entirely accumulated after the fact, after the violation has been alleged, is acceptable to the Court, whether it is relevant in defense of the allegation of the cost justification or whether or not the law requires the businessman who considers giving a difference in price to customers, whether or not the law does not envisage that that businessman will determine at that time, whether or not the difference in price is fair.

The Court: Of course, as I understand your complaint, you allege the continuing differential in prices between certain customers of the same class and using the same quantities?

Mr. Kerr: That is correct, your Honor.

The Court: So that the information, if your complaint is a continuing one, as to these discriminatory practices, the information would be material, at least as to the discrimination of any that is in existence at the time the cost study is made.

Mr. Kerr: Yes.

The Court: It might not be and it might also be or might not be explanatory of the previous discrimination, if indeed a previous discrimination is found.

[fol. 551] Mr. Kerr: That is correct.

The Court: From the evidence.

Mr. Kerr: Before the Court we have the Government's case which was handed in in November.

The Court: Yes.

Mr. Kerr: Which had to do with prices charged in March and a few prices in December of 1954 and March of 1955.

The Court: Right.

Mr. Kerr: As far as we can tell from the face of the Borden cost study—now, we could stand corrected on this, of course—but as far as we can read on its face all of the cost justification data was accumulated after those two times so that the discriminations existed before the cost justification study was begun or was made.

We wish to bring this up at this time and ask the de-

fendants, perhaps, to look into it and argue their side of it to your Honor. We want it to be decided before we undertake what will be, I think you must admit also—

The Court: Your rebuttal.

Mr. Kerr: —considerable time to study and rebut this cost study.

[fol. 552] The Court: Well, before I hear from the defendants on the point I merely want to reiterate what I have just said. I think by and large, take it entirely now as academic or a hypothetical question, where a continuing offense is alleged in plaintiff's complaint and an equity complaint such as this, any evidence down to the time of trial as to justification of the practice is on its face admissible.

Now, what I think you are saying and which you may well argue in your brief, and if this evidence, and you are not sure that it is, but if it is limited entirely to evidence of events that have occurred subsequently to the filing of the complaint and of the introduction of the case in chief against these defendants, your argument, I should think offhand, without going into it, goes more to the weight than to the admissibility of such evidence; and the argument is available to you, of course, in support of your complaint and against their defense that, too, this is admissible and it is evidence of how they arrived at the cost that they gave Merchant B in 1956, but it is not explanatory of what they did with Merchants A and B in 1953.

Mr. Kerr: That is correct.

[fol. 553] The Court: Now, that I think goes to the weight rather than the admissibility if your argument exists.

Mr. Kerr: If it goes to the weight, your Honor, then I think we should indicate our study of the data which has been given us and after checking it, state whether or not we can accept it in the pre-trial order.

The Court: Yes. The fact that they may choose to rest their case on evidentiary data that is accumulated subsequent to your case in chief and argue from that that this applies also to the prior violations as alleged in your complaint is a matter of choice of the defense counsel.

Mr. Kerr: Yes.

The Court: And, of course, if they do rely entirely on such evidence they realize, and I should think they antic-

ipate that you may make the very argument that you have just presented. I do think, however, without even hearing from them, that this argument as to the weight of the evidence rather than to its admissibility, since your complaint alleges a continuance of these facts and asks for injunction restraining them in the future——

Mr. Kerr: Very well.

The Court: Do you want to speak to that point?

[fol. 554] Mr. Hart: If the Court please, I would like to say just——

The Court: I want to hear him on his first.

Mr. Ball: If I have these general comments, while I did not anticipate it would be raised at this particular stage of the proceeding for the reasons I think the Court has expressed; on the general proposition of cost defense the very point that I mentioned here about the very cost is in itself an indication that these can't be made twenty-four hours or overnight, at such time as the question is raised.

Now, the problem here of weight is simply what factors are there that indicate that the cost differentials established as over a five-week period, which are compared to book costs that run over the entire year——

The Court: Yes.

Mr. Ball: —raise an inference, a substantial inference or proof that the same differentials existed four months earlier.

Now, it seems to me that that is a problem of arguing a relative weight inference.

The Court: That is exactly the way I felt about it. Of course, in the first place, it is a matter of choice for defense counsel to elect. I mean, of course he doesn't have to introduce any evidence if he doesn't want to. He can merely argue the weight and the sufficiency of your evidence.

Mr. Kerr: Yes.

The Court: In support of your complaint and if he chooses to introduce evidence all of one period and argue it from that, that it applies to the preceding period for his justification, for what his client has done in the preceding period, that is a matter of choice of defense counsel. I didn't mean to interrupt you, Mr. Hart.

Mr. Ball: May I also say to the Court we do mention

that this is not the only cost survey of this type. We have made written surveys.

The Court: Thus far this is the one that you are offering.

Mr. Ball: We have deliberately chosen not to put the one of three years ago that we would have put in at the time of the prior trial because to conform it to this pattern would require another several months of work. Now, there is that practical problem that I want the Court to understand because a reference has been made in the pre-trial order of this prior survey.

[fol. 556] The Court: Yes.

\* \* \* \* \*

STATEMENT BY MR. HART, COUNSEL FOR DEFENDANTS,  
BOWMAN DAIRY COMPANY, AND COLLOQUY THEREON

Mr Hart: I want to point out to the Court that Mr. Kerr's remarks would not necessarily apply to the Bowman study. We don't know. Maybe he thinks they do.

The Court: Now, let me be informed as to what you have [fol. 556a] been doing all of this time. You have also completed your study, have you?

Mr. Hart: Yes.

The Court: And submitted them to the Government?

Mr. Hart: We have prior to the time that the Borden study went in. They have had it considerably longer. I don't know just exactly.

The Court: Are you in a position to comment on his?

Mr. Kerr: Yes, your Honor, we are in position to comment on the Bowman cost study.

First, again with Bowman as with Borden, on other matters, I think we are in substantial agreement. They have conducted two outside surveys and we have accepted both of those and are willing to stipulate to that.

The Court: Yes.

Mr. Kerr: They can go into the record.

There was, I think he wanted to put in some of the ordinances. He wanted to make up some other wording.

Mr. Hart: Yes.

Mr. Kerr: I think that that is all going to be ironed out fairly well. So we are in agreement on that.

On the Bowman cost study we do not make the remark

[fol. 557] Mr. Hart would wish me to say now. We do not make the remark that it is entirely after the fact of the allegations in this complaint, or in the facts which we put in in November.

With respect to your cost study and this goes to Borden, now that we have talked this matter over, we will after checking, generally accept the cost study as your offer of proof upon the cost study. We will be glad to stipulate as to the qualifications of the person who would present it and his background as an expert, but we will require, we do desire to cross examine the person presenting the study in Court upon the cost study which has been presented to us.

The Court: You desire to cross examine him in Court, or would you rather do that privately?

Mr. Kerr: As long as it is on the record, your Honor, we think that it should be before your Honor so that——

The Court: Well——

Mr. Kerr: These rulings can be made at the time.

The Court: If it is to be before me, I wouldn't want it until I have had complete opportunity to study and digest the report on which you are going to cross examine.

Mr. Kerr: All right.

The Court: That is going to slow up putting it in here. [fol. 557a] Could you adopt a different tactic so that we still can get the entire record in at one time?

Could you conduct your cross examination of the expert by way, first of all, do not waste time on his qualifications and all that as long as you are stipulating them, but on just the material parts of the report that you wish to question, could you do that by way of deposition? And then let us, say, have cross examination and redirect by way of deposition and file the depositions at the same time?

So that what I would like to do, since we have made the progress that we have made thus far in our pre-trial conference, for which I commend all of you——

Mr. Kerr: Yes.

The Court: In fairness to both sides, I would like to have the whole case before me in the same format. In other words, to read some of it and then hear the rest of it in the way of cross examination of experts or otherwise in Court, and then adjourn the Court hearing and get the briefs, I think is not fair to either one of you because—I don't know,



maybe some Judge can do it, but I can't carry in my mind and in the meanwhile I am trying. I understand, two [fol. 558] or three important criminal cases and certain other cases that are on my calendar—I can't carry in my mind in the intervening three or four months your cross examination of this expert on the material that he files in the pre-trial order.

Now, what I would like to have, in fairness to all of you and I think agreeable to the procedure that we have set forth here that we have defined in this pre-trial conference, if we could present it all so that I can start reading with Document 1 and then reading Document 199, and then turn to your briefs, that when, for example, I am reading the Borden Company pre-trial order here, assuming this is what we agree on, having first read what you submitted last November——

Mr. Kerr: Yes.

The Court: —then reading this, I can sit down and alongside of me your cross examination of this man which I can read at the same time and then go on to his study and your cross examination of his expert, finishing all of that, and then start on the briefs and refer back as I read to these various documents in evidence.

Now, can it be done that way?

Mr. Kerr: I think I did not make myself clear. I think that is about what I am talking about.

[fol. 559] The Court: Well, that would be helpful to me.

Mr. Kerr: Mr. Hart has presented and Mr. Ball has presented a cost study which you have before you.

The Court: Yes.

Mr. Kerr: And other matters.

The Court: That is right:

Mr. Kerr: We will say that that is their affirmative defense in the case, and that we have reached the point in the case in which their witnesses on the stand have offered that.

The Court: This? Exactly.

Mr. Kerr: That is correct.

The Court: There are two other portions that he has not read.

Mr. Hart: Two other portions that we are going to submit within the next two weeks also.

The Court: Very well. But as to this phase of it, their

evidence is in, their witness on the stand and he has bowed in your direction and said, "Your witness"?"

Mr. Kerr: Right. In addition to that, we will have checked all of the raw data so that there is no —

The Court: Yes.

Mr. Kerr: —misunderstanding or there are no differences of mere numerical matter.

[fol. 559a] The Court: Of authenticity.

Mr. Kerr: And the only thing left will be to go into the actual theory of the cost justification and I think —

The Court: Insofar as this draws conclusions?

Mr. Kerr: That is correct.

The Court: To cross examine him on the conclusions drawn. Now, Mr. Ball represented — just a moment. Mr. Ball represented with reference to his and Mr. Hart has previously represented with reference to his, that they have tried to avoid —

Mr. Kerr: No, Mr. Hart's study has made conclusions.

The Court: There are conclusions.

Mr. Kerr: That is correct.

The Court: I thought that you were attempting to avoid them also.

Mr. Kerr: They differ in this respect.

The Court: Very well. Then, insofar as Mr. Hart presents conclusions and insofar as Mr. Ball avoids conclusions, you desire cross examination?

Mr. Kerr: That is correct.

The Court: I don't see why you should not have it in the form of a deposition and redirect on the same points of cross examination.

[fol. 560] Mr. Ball: It is my anticipation that if Mr. Kerr would look at our draft as if it were Mr. Malone's testimony in chief —

The Court: Yes.

Mr. Ball: Then we would get —

The Court: Then we would have this.

Mr. Ball: —in the deposition cross examine Mr. Malone. I envisage one step further and we will not need then the cross examination or examination in the raw form of a deposition but that could again be reduced to comparable paragraphs on which we would agree based upon that.

The Court: That would be very helpful if you could.



Mr. Kerr: We will certainly attempt, your Honor. We will certainly attempt.

The Court: That is, at least reduce it insofar as you can, but if you can't it still does not present the difficulty to me that the sporadic cross examination in an occasional court session would present because if you can hand with this even the complete deposition of Mr. Malone on cross examination and redirect, it will certainly present it in a more orderly fashion to me, if it can be stipulated that that be taken as if the testimony were given in open Court. [fol. 561] which you will stipulate.

Mr. Kerr: Actually, your Honor, we do not contemplate that it would be sporadic at all.

The Court: It will be as far as I'm concerned.

Mr. Kerr: Everything will be done and then we would have this one session in whatever two or three days.

The Court: Then it would be two or three months before you get your briefs in.

Mr. Kerr: That is correct.

The Court: By the time I open your first brief I will have completely forgotten who was on the stand and what he said. That is why I would like to have this, all frankly now, and you gentlemen have been very fair with me and I am trying to be equally fair with you all the benefit that that will be to the Government and after all this is a trier of the facts you have to deal with here. You have been plagued with me in this particular case all that that will do for you when I sit down to decide this case is that I will tell this man sitting here, this court reporter, to bring me in the transcript of that testimony that took place three or four months ago before I set time for filing briefs. Then I will try to refresh my recollection at that time by going through it. And the effect, if any, in not having the [fol. 561a] jury here I can assure you, there are no melodramatic effects that would influence the Court one way or the other and sometimes those enter it in a jury trial. And all I will have again is the same record that you can give me. So why not save my sitting through it the first time?

Mr. Ball: I would like to make, if I may, Mr. Kerr, one rather general observation because of what you said about cross examination theory.

I had a suit and hoped that the problem of the theory in our particular case would be a problem of argument of counsel. For this reason: We have made in this schedule certain compilations, arithmetical divisions which we call allocations. We have not attempted to draft any paragraph to state the reason we did it this way. We have merely described how we did it.

Now, it would seem to us that if there are other ways in which it can be done it is perfectly possible for those arithmetical activities to be performed by you and submitted as different kinds of schedules.

The Court: In rebuttal.

Mr. Ball: Well, it could include it in the order. Then we would submit to the Court. The Government in taking [fol. 562] this basic data has divided it arithmetically in this fashion: We have divided it here——

The Court: Yes.

Mr. Ball: Now, we are drawing the conclusion as the result of their allocation or division of it. We are drawing this conclusion. Now, it seems to me, frankly,—I just don't consider on the basis of our approach that this is a situation for expediting or theory.

It just seems to me it is a good old legal question of what inferences do you draw from certain factual data.

I want to make that point clear to Mr. Kerr and to the Court that when we talk about cross examination of theory, I must confess I see very little scope of cross examination for theory because we are trying to present a theoryless pre-trial order leaving the theory to be merely the argument as to the validity of interests.

Mr. Kerr: Well, you carried the burden here of justifying cost differences which have been shown, and as his Honor said previously with respect to another matter, it is up to you to decide whether or not you are going on the burden. [fol. 563] Whether or not you have to cite your theory in order to successfully bear that burden, is something that we will say now that we will argue.

Mr. Ball: I understand that.

The Court: You may argue that in your briefs.

Mr. Ball: That is right.

The Court: But his point now is whether or not cross examination is necessary. In view of the facts that he

has completely and factually said. I have not read this yet either, presented his evidence here as much as it could have been elicited by direct and cross examination in Court.

He further states that if there is something further that you would have elicited upon cross examination, that he has not now factually set up in here, why, he is willing to add that to this so that when it is finished this becomes, not a stipulation of testimony so much as a stipulation of facts.

Mr. Kerr: Well, let me say this: We have studied the Bowman one much more thoroughly than the Borden right now. It might be that we can do it.

The Court: There are two different theories.

Mr. Kerr: That is correct.

The Court: Now, I think in order to do justice to his [fol. 564] presentation, to Mr. Ball's presentation here, you must study this on the theory, on the basis of the theory of which he has submitted it.

Mr. Kerr: All right.

The Court: And which he agrees may leave it incomplete from your point of view at the present time. And he further states he is willing to complete it if, indeed, there are any factual matters that should be added here in order to present a complete picture.

Do I correctly summarize both of your positions?

Mr. Kerr: I think so, Judge.

The Court: Suppose you then review his pre-trial order in that light, and with that view in mind when you are prepared to speak further to it we will hear you. If it then becomes necessary, in your opinion, to read the deposition of Mr. Malone, we will do so.

I hope that since it is presented in this fashion that it will be possible for you to add whatever you think should be added by agreement with the Borden Company and get it all in here in the one form.

Mr. Kerr: I think we probably can. We have worked together very well so far.

The Court: Well, continue. Do I correctly summarize [fols. 565-617] it?

Mr. Ball: You do. There is one colossal point that I think the Court may be interested in.

As the Court is aware, there is a very great difference

in approach between the defense that we have introduced on cross and that introduced by Bowman.

The Court: Yes.

Mr. Ball: I think in many ways that will be helpful to the Court.

The Court: Yes.

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[fol. 618] [File endorsement omitted]

[fol 619] IN UNITED STATES DISTRICT COURT, NORTHERN  
DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 51 C 947

UNITED STATES OF AMERICA Plaintiff,

vs.

THE BORDEN COMPANY, et al., Defendants

**Transcript of Proceedings—March 7, 1957**

Transcript of proceedings had at the pre-trial conference in the above entitled cause before Honorable William J. Campbell, one of the Judges of said Court, in his jury room, United States Courthouse, Chicago, Illinois, on Thursday, March 7, 1957 at 2:00 o'clock, p.m.

**PRESENT:**

Mr. Bertram : g. Appeared on behalf of the Government;

Mr. John P. Stevens, Appeared on behalf of the defendants Bowman Dairy Company and Ridgeview Farms Dairy, Inc.;

Mr. Stuart S. Ball, Mr. H. Blair White, and Mr. Joseph Greaves, Appeared on behalf of defendants The Borden Company and Belmont Dairy Company.

[fol. 619a] The Court: How did you and Mr. Hart get along on this fiber versus glass bottle issue that was left open, wasn't it, the last time?

Mr. Long: At the last time we had thought that we were going to take a further deposition of Mr. Bergfeld on that point.

The Court: Yes.

Mr. Long: That fiber against glass study, and the restaurant cost study. We have analyzed those and gone over those very carefully and have decided we do not care to take any further deposition of Mr. Bergfeld.

The Court: Then they can rest, can't they?

Mr. Long: They can rest and we have indicated sort of generally the other day to Mr. Stevens what our feeling is about the restaurant cost study. We do not feel like

there is probably any area of agreement that we know of on that.

The Court: I thought we more or less decided you could make your day survey too, if you wanted to, and put that in more or less in the form of a rebuttal.

Mr. Long: We have prepared that.

The Court: Put his in and argue the conclusions to be drawn from it. Wasn't that what we decided?

[fol. 620] Mr. Long: That is what we had sought to do. We, I think, will probably do the same way on the Bowman store competition survey. In other words, we have taken those facts and figures and we have made a little survey of our own. We have made a graph or a chart which we think may show something else than what they show there.

The Court: Yes. It is all a matter purely of argument, anyway, and what conclusions should be drawn from these various facts that are developed by the surveys.

My thought was, and I think I expressed it previously, to let them in both for the Government and for the defense.

Mr. Long: Fine.

The Court: As to what they are worth, and then for what they are worth, and let us argue the effect of it.

Mr. Long: Yes.

The Court: Are you agreed that you can rest now, then?

Mr. Stevens: No, not quite, your Honor?

The Court: What else is there?

Mr. Stevens: It was my understanding and I believe [fol. 621] Mr. Hart's, that we were to work out with the Government, which we have done, areas of agreement or disagreement.

The Court: That is right.

Mr. Stevens: On the cost studies.

The Court: Anything you can agree on include in the stipulation.

Mr. Stevens: Correct, and we had had a conference prior to our last session in which we had gone over a number of points on which we did agree and on a few to which they took exception to our studies. We were going to undertake to draft a paragraph reflecting that so that we can define the issues for the benefit of your Honor.

The Court: Very good.

Mr. Stevens: We did not go ahead with that until after the deposition of Mr. Bergfeld was completed because we

thought that might shed further light on the general problem and I just learned this week from Mr. Long that they had decided not to go forward with the deposition and that they had completed the last fiber study and I rather had decided not to make the results of that study available to us until we had rested on what material we had.

[fol. 622] So that I have now started, in fact I have drafted a good deal of what would in my opinion, according to my understanding, reflect the—

The Court: The areas of agreement.

Mr. Stevens: —the areas of agreement and then incidentally, I have sent what I think is the heart of that out to Mr. Bergfeld in New York to look at because it deals largely with his special confidence.

The Court: Yes.

Mr. Stevens: But there is one thing that bothered me and that I thought I would like to ask Mr. Long because in reading over the transcript of the last session which I did this morning, I found a comment by Mr. Jinkinson which seemed to me—I didn't quite understand. It seemed to me to be perhaps changing. It is on Page 10 of the last transcript in which he said for the record:

“We agreed with several matters in regard to this cost data that the Government#said we would agree to.”

He said to put those in the form to show us after he gets it in the form. I think you might recall, your Honor, Mr. Hart was under the impression last time that the pre-trial would be at 2:30.

[fol. 623] The Court: He was late.

Mr. Stevens: He did not come, for which he wanted me to apologize for him for that.

The Court: Yes.

Mr. Stevens: But he did not want Mr. Hart to be left with the impression that he says we specified to certain things we would agree to, he did not mean that we didn't disagree with the other things that we did not agree to.

Well, as I understand that, it seems to be saying when we agreed to some things we may disagree.

The Court: What I understood him to say—

Mr. Stevens: We disagreed with everything else.

The Court: Yes.

Mr. Stevens: At our conference there—Mr. Long may correct me on this—it was my understanding and the reason I want to bring it out now, it will make a lot of difference in the drafting of it. I won't draft a lot of paragraphs if there is no point to it.

The Court: Yes.

Mr. Stevens: It was my understanding with respect to the cost study, and except for the restaurant study, which I do not mean to discuss, or the January, 1956 study, which [fol. 624] is the one that the glass fiber study is connected with, except for that that the Government had only two objections to our cost defense, with respect to the March, 1955 prices. One was that the time studies that we used in computing time standards were '55 studies, all taken from routes on the Elston Division.

Mr. Wooley seemed to feel that we should have taken studies from all of our divisions. We felt that would be one point of disagreement which we would identify for your Honor.

The second point of disagreement was that we prepared a cost of running a route per day. We have all the expenses involved in the cost of running the route. We took the total cost per route day and apportioned it among customers on the basis of the driver's time required to service the various customers, and that the Government apparently felt that the use of driver's time to apportion the total cost of operating the route was an inappropriate method of apportioning. If it would have been limited to the driver's compensation that could be apportioned that way, but since the total route cost included a computation based upon a number of elements such as trucks, garage [fol. 625] expense, and so forth——

The Court: Yes.

Mr. Stevens: —we couldn't use that method of apportioning time. Well now, those were as I understood it at our conference the two objections they had to our basic approach and that if we persuaded your Honor that our approach was sound with respect to those two points that then they would accept the fact that we had made out a good cost defense.

And, on the contrary, if we failed to persuade your Honor on either of those two points——

The Court: Yes.



Mr. Stevens: --we would have to agree that our cost defense had not been successful.

The Court: And that persuading would be done in the briefs, having narrowed it--

Mr. Stevens: That would be--

The Court: --or the order and the pre-trial conference.

Mr. Stevens: The argument in the briefs would be limited to those two points with the exception as I indicated earlier to the restaurant study.

The Court: The fiber glass.

Mr. Stevens: Glass fiber point in that later study.

[fol. 626] If that is not so there is a lot of persuading to be done. There are a lot of subsidiary issues.

The Court: What is your understanding?

Mr. Long: My understanding of what Mr. Jinkinson meant there was that we had in mind one other thing there that I think may not have been made explicit to them, which I think we thought was implicit, and that is that we thought the coverage of cost elements may not have been all that it should be.

We had in mind particularly in examining Mr. Bergfeld about the central office expenses in which there was no findings there; there was no central office expenses which were made a part of that cost study there.

The Court: That was the third objection.

Mr. Long: Yes.

The Court: Which you had to the cost study they presented.

Mr. Stevens: It was not an adequate coverage of all the cost elements that should have been in the cost study, the central office expense.

The Court: The expense of the central office was not included in the computation.

[fol. 627] Mr. Stevens: Yes.

Mr. Long: The time of the executive officers of Bowman Company and so forth, was not computed and an account kept of that so that could be allocated to the total cost.

The Court: Of course, that would be pretty well a cost analysis by some individual anyway, wouldn't it? I don't know how you could do that with much mathematical certainty.

Mr. Long: As to that, we don't know what the time of the executives are. We have no time studies upon which

we can make a rebuttal on that, except that we felt there ought to be a coverage of that.

The Court: Well, then the areas of disagreement are three rather than two?

Mr. Stevens: I don't want to—

The Court: I think you could pretty well pinpoint it in your stipulation and add merely one area to the two that you have enumerated.

Mr. Long: That is fine.

The Court: Other than that you do not challenge the cost study?

Mr. Long: No. We examined, I think there was some feeling about the solicitors, the matter of the solicitor [fol. 628] costs there.

The Court: Of course, you are not precluded from argument on any of these things, I mean, but what he is talking about, I mean argument with reference to the overall weight.

Mr. Long: Yes.

The Court: Of the exhibit as such is open to you in the briefs, but what he is talking about is your particular objection to this as a good cost study with reference to their defense. These other things that you are talking about I think we would never be able to get into a stipulation, if we bring in each and every one of these little one of these. Can I confine it to the three?

Mr. Long: Yes, I think so. The principal issue Mr. Stevens already quite clearly articulated, the principal issue between us.

Mr. Stevens: Is the question of drivers and the method of allocating the cost.

The Court: That is right.

Mr. Long: We thought we would leave it open for these other things as much as we could so that whether they are a matter of argument or whether they are a matter of rebuttal, at least we want to have a chance to reply.

[fol. 629] The Court: I do not want to restrict you in your argument. Suppose, for example, we were actually in the trial of the case and you presented this cost study. You had your cost accountant and your analyst on the stand and qualified and they said yes, this is the result of the survey and here it is, Defendants' Exhibit 421-A and B, and then they object to it because of these main reasons

that he has just enunciated and I overrule the objection and they are received.

It still can be argued as part of the general issue, the weight of it, can't it?

Mr. Stevens: Your Honor, if I may make this observation? As I understand it, those three objections, they are not to the admissibility of the cost.

The Court: They go more to the weight.

Mr. Stevens: They go to the ultimate conclusion of whether or not this is a sound cost analysis and I think if we prevail in this case.

The Court: As to admissibility.

Mr. Stevens: Of course. As I understand the Government's position if we prevail on the issues which separate us now they would accept the fact that our defense should be sustained. I think it went that far and I think we made [fol. 629a] the contrary agreement if we failed on those issues that this defense would not be sustained.

Mr. Long: I think that is right and fairly well stated.

The Court: Let it be so understood and you argue on those three points in the briefs. If you prevail then this pretty well sustains your defense.

Mr. Stevens: That was my understanding.

The Court: Very good. Is that yours?

Mr. Long: Yes.

The Court: It is so understood then.

Mr. Long: Do I understand now that whenever we find out our areas of agreement and we agree to a certain part of their pre-trial order there, then we are going to have the right to come in with our rebuttal which will contain our own view of the way we think these ought to have been allocated here, these costs ought to have been allocated here.

The Court: I see.

Mr. Long: We have charts and graphs that we are going to put in there, using their facts and figures.

The Court: As a matter of rebuttal, certainly.

Mr. Long: Yes.

[fol. 630] The Court: That would be on the trial in any event and I do not see why it couldn't be done here.

Mr. Ball: That will be done on the rebuttal portion of the pre-trial order?

Mr. Long: Yes.

The Court: Certainly, not as part of the defense. You

can't stipulate to that but it will be as part of the rebuttal, of the rebuttal portion, rather.

Mr. Long: Yes.

The Court: Of the pre-trial order. What I want to do is to get these defendants rested.

Mr. Long: Surely.

The Court: Then I will let your rebuttal in.

Mr. Long: Yes.

The Court: All right, will you put it in then with the understanding that these are the three main objections. If you prevail with reference to those I will accept your cost analysis as a good defense on this point.

Mr. Stevens: All right, your Honor.

The Court: Is that understood?

Mr. Stevens: That is my understanding.

The Court: And agreed by both sides.

[fols. 631-643] Mr. Stevens: Just so that it is clear, the third part that you mentioned, Mr. Long, is the cost study is deficient because it failed to include an element of cost in computing the total cost per route day, the central office overhead?

Mr. Long: That is right.

The Court: Very well.

Now then, how about this fiber versus glass bottle? Are you going to come up with a few paragraphs or a stipulation on that? There are two other points to resolve before you rest.

Mr. Stevens: As I understand Mr. Long, they want us to rest first before they let us know what the results of that study is. I don't--anything about that except that they spent a lot of time making it.

Mr. Long: To be frank, I am not sure.

The Court: Do you want to include this as partial rebuttal, if you include it at all?

Mr. Long: Yes.

The Court: That doesn't need to hold up your resting.

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[fols. 644- 656] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT, NORTHEEN DISTRICT OF  
ILLINOIS, EASTERN DIVISION

No. 51 C 947

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE BORDEN COMPANY, et al., Defendants

**Transcript of Proceedings—May 17, 1957**

Transcript of proceedings had at the pre-trial conference in the above-entitled cause before Hon. William J. Campbell, one of the Judges of said Court, in his jury room, United States Courthouse, Chicago, Illinois, on Friday, May 17, 1957, at 2:00 o'clock, P.M.

PRESENT:

Mr. Earl Jinkinson, Mr. Bertam Long, and Mr. Elliott Woolley, On behalf of the Government;

Mr. Edward L. Hart, Jr., and Mr. John P. Stevens, On behalf of the defendants, Bowman Dairy Company and Ridgeview Farms Dairy, Inc.;

Mr. H. Blair White, and Mr. Joseph Greaves, On behalf of defendants The Borden Company and Belmont Dairy Company.

[fol. 657] The Court: May I keep this? I see you note others as we go along here. 31 they say, take the second sentence up, 31, Page 21.

Mr. Jinkinson: We will buy the first sentence.

The Court: The first one you like?

Mr. Jinkinson: We don't like it but we'll buy it.

The Court: All right.

Now then, the second sentence, "Plaintiff concedes that if the Court finds and concludes—"

Mr. Hart: I might say that this again is paraphrasing the discussion at that last hearing. The concessions that we have in 29 and the concessions by the Government here—

The Court: Yes.

Mr. Hart:—are inter-dependent one upon the other.

The Court: Yes. Now, you don't want to concede that, do you?

Mr. Long: No. We do not like "the Court should find" or "conclude," "should or should not." That is up to you.

The Court: That if the Court finds and concludes—

Mr. Hart: Whatever the Court may find.

Mr. Jinkinson: This is what the Court is ultimately going [fol. 658] to find, isn't it?

The Court: Yes. Do you want to say that instead of this, instead of "the plaintiff concedes," that if the Court finds and concludes such and so, then the Court should find and conclude that the price differences identified on Schedule I of the pre-trial order were fully justified by the cost differences? I think this goes a little farther than the concessions in 29, doesn't it?

Mr. Stevens: No. It is about the same.

Mr. Hart: I think it is about the same.

Mr. Jinkinson: Well, it is just a restatement of 29.

Mr. Hart: We can say to be fully and completely cost justified.

Mr. Stevens: In the other we say they would not be shown.

The Court: Yes.

Mr. Stevens: This was my understanding of our last session, that these three points of difference would determine whether or not this was a good defense.

Mr. Hart: In other words, it has nothing to do with the ultimate finding of the Court, except upon this particular feature of it.

The Court: Yes. We did discuss this at the last pre-trial. [fol. 659] You refresh my recollection on that, will you?

Mr. Long: I don't know that we quite put it in this final form.

The Court: We got into an agreement on this.

Mr. Long: 28; I thought 28 was what we agreed on, Paragraph 28 there. Mr. Stevens and I had a colloquy but I didn't know that we quite went as far as 29 and 31.

The Court: How would you propose—29 I have ruled on. How about 31? How would you propose to change this? Do you want to eliminate it altogether? Certainly we did discuss this.

Mr. Long: That is right.

The Court: At our last pre-trial. We did arrive at an agreement.

Mr. Long: I thought we would rather have the last part of 29 that you have already ruled on and the last part of 31 go out and 28, including the agreement of counsel, being sufficient in itself without the last part of 29 and the last part of 31.

The Court: Well, I would want to refresh my recollection by the transcript of the last pre-trial; but before we get to that, would this be satisfactory, subject to my refreshing [fol. 660] my recollection and of course subject to your pointing this up in your argument, if we adopt the same tactics here that we did just a moment ago with reference to—was it 30?

Mr. Hart: No. That was 29.

The Court: With reference to 30, when I said that the plaintiff represents, didn't we? Or the defendant represents, I think it was, wasn't it? Yes, the defendant, Bowman Dairy, represents. Why don't we say here instead of the plaintiff concedes, you could make the suggestion here on behalf of the defendant and of course that gets into argument. What you want to avoid is the concession?

Mr. Long: Yes.

The Court: It seems to me that we went pretty nearly this far the last time. I lose confidence in my ability to recollect things because—

Mr. Stevens: This is what we did.

The Court: Let me see it. Where are we? Is this the last page?

Mr. Hart: We drafted 29.

The Court: (Reading):

“Mr. Ball: That will be done on the rebuttal portion of the pre-trial order?”

“Mr. Long: Yes.”

Mr. Stevens: Towards the middle of the page, your Honor.

[fol. 661] The Court: (Reading)

“The Court: Certainly, not as part of part of the defense. You can't stipulate to that but it will be as part of the rebuttal, of the rebuttal portion, rather.

"Mr. Long: Yes.

"The Court: Of the pre-trial order. What I want to do is to get these defendants rested.

"Mr. Long: Surely.

"The Court: Then I will let your rebuttal in.

"Mr. Long: Yes.

"The Court: All right, will you put it in then with the understanding that these are the three main objections. If you prevail with reference to those I will accept your cost analysis as a good defense on this point."

That is about as clear as I could say it, isn't it? Apparently I did so. All right. Then that being the case, let me see, since after your discussion at the last meeting, that was the conclusion that I came to. Let me eliminate the necessity [fols. 662-666] for the plaintiff conceding anything and since this is to be an order of mine, just start with the words: "If the Court finds and concludes" and strike the words "plaintiff concedes that." Start with "If the Court finds and concludes," 1, 2 and 3. Then the Court should find and conclude that the price differences identified on Schedule 1 of the pre-trial order were fully justified by cost differences. I think I said that your cost analysis was a good defense on this point.

Mr. Hart: Yes.

The Court: That states the same thing. The Government is not then conceding it but I am stating what I found at the last pre-trial conference after I had heard you on the point.

Mr. Long: That will be fine.

The Court: Is that agreeable to you?

Mr. Long: Yes.

The Court: Correct the order accordingly.

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[fol. 667] Mr. Jinkinson: Now, your Honor, we get down to a very, very—what the Government considers a very, very serious objection again on Page 25.

Mr. Hart: 25?

Mr. Jinkinson: 25. It is part of Paragraph 34. That is from Page 25 over to the top of Page 37. That, your



Honor, is the inclusion herein in this pre-trial order of text books.

In the first place the Government can't examine the text books. In the second place if we are going to get into a labyrinth of textbooks, we are going to produce textbooks to read for the next three or four years. It is a question of cost accounting.

The Court: I can assure you I won't read them.

Mr. Jinkinson: They are only an opinion.

Mr. Long: That is one reason we don't want them in.

The Court: Why does brother Bergfeld have to put in all of this?

Mr. Hart: The question that they raised, if the Court please, is paraphrased there in section, or in Paragraph 28. They have raised the point that using drivers' time as a method of allocation of all costs is unique and unheard of.

[fol. 668] Mr. Woolley: Illogical.

Mr. Hart: All this is is a demonstration that that same method has been used in cost accounting for a period of some years.

The Court: Why don't I give you leave to attach this as an exhibit to your brief?

Mr. Hart: Fair enough.

The Court: And take it out of the pre-trial order?

Mr. Hart: All right.

The Court: You can have the same leave with reference to authorities or printed volumes that you want to attach to yours.

Mr. Long: That is better.

The Court: It is agreed then that the references commencing on Page 25, the present form, Page 25, with Reference A and concluding on the top of Page 37, be deleted from the pre-trial order, and that leave be given—wait a minute. No, no, I beg your pardon. Stopping with Reference K on Page 36, because otherwise we are getting into testimony there, Stopping with Reference K, inclusive, Page 36, be deleted and the defendant Bowman Dairy Company be given leave and is hereby given leave to attach said references to its brief as an appendix thereto, and cite the attention of the Court to such references at the

[fols. 669-720] point in this brief where it is arguing the effect of Mr. Bergfeld's testimony.

Mr. Hart: Yes. I think that will answer it.

The Court: That similarly be given the Government with reference to similar appendices to its brief. Is that satisfactory?

Mr. Jinkinson: Yes.

Mr. Hart: Yes.

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[fol. 721] IN UNITED STATES DISTRICT COURT, NORTHERN  
DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 51 C 947

[Title omitted]

**Additional Pre-Trial Order Relating to Plaintiff and to  
Defendant The Borden Company—September 19, 1957**

The Court, pursuant to Rule 16 of the Federal Rules of Civil Procedure, having directed the attorneys for the parties to appear before it for a pre-trial conference concerning the evidence to be offered upon the reopening of this action; the Court having set September 26, 1957 as the date for said conference; the Court having met with counsel for the parties on said September 26 and from time to time thereafter; the Court having entered the Supplemental Pre-Trial Order of November 8, 1955; and plaintiff and defendant The Borden Company (hereinafter called "Borden") having come to further agreement<sup>2</sup> in the course of said conferences:

It is Ordered:

1. This Order is a supplement to the Pre-Trial Order entered in this action on March 4, 1953 and the Supplemental Pre-Trial Order entered in this action on November 8, 1955;

2. This Order pertains only to plaintiff and defendant Borden;

3. The introduction of evidence under any and all of said agreements is made without agreement as to the weight [fol. 722] of such matters and subject to the objection reserved by the plaintiff and the defendant Borden that the evidence sought to be introduced is immaterial or irrelevant, and the same reservation and objection shall apply to all stipulations, agreements and admissions of fact contained in this Order;

4. This Order and all matters herein referred to and all admissions of fact and agreements with respect to the further trial of this action shall be used for no other purpose than the trial of this action and are made solely for the purposes of this trial.

5. Schedules I, II, III and IV and Exhibits A, B, C, D, E and F referred to herein are the schedules and exhibits attached to the Supplemental Pre-Trial Order of November 8, 1955.

6. All Exhibits, Borden Bulk Exhibits and Schedules referred to in this Order may be offered in evidence without further proof or authentication.

# I. ADDITIONAL AGREEMENTS AS TO FACTS, EXHIBITS AND SCHEDULES

## A. BORDEN'S STORE PRICES AND DISCOUNTS

1. Exhibit D was mailed by Borden or delivered by its route drivers on August 29 and 30, 1955 to Borden's independently owned store customers in the Chicago area.

2. Exhibit G, being a form letter of Borden addressed to "Dear Grocer", dated June 2, 1954, was mailed by Borden to its independently owned store customers, together with Exhibit A, on June 4, 1954, and sets forth the prices charged by Borden to all of its store customers beginning June 2, 1954.

3. Exhibits H and J are, respectively, a discount schedule [fol. 723] effective June 1, 1954, and a price list effective June 2, 1954, issued by the Dean Milk Company (a distributor of fluid milk in the Chicago area and hereinafter called "Dean").

4. The Dean discount plan and price list, Exhibits H and J, were distributed by Dean to many of its store customers in the Chicago area on or about June 1, 1954. The price list sets forth the prices charged many store customers by Dean beginning June 2, 1954, and the discount schedule sets forth the discounts allowed by Dean to many of its store customers beginning June 1, 1954. Copies of Exhibits H and J were in Borden's possession before it prepared and issued Exhibits A, B, C and G.

5. In preparing its price list dated June 2, 1954, Exhibit G, and its discount plan effective June 1, 1954, Exhibit A, Borden copied the Dean price list and discount plan shown on Exhibits H and J.

6. Various price changes to store customers in the Chicago area were made by Borden, Dean and other distributors be-

tween June 2, 1954 and December, 1954. In December, 1954 and in March, 1955, the prices charged by Borden to its store customers and the prices charged by Dean to many of its store customers continued to be identical on identical fluid milk products. All discounts allowed by Borden to store customers listed on Schedules I and II were computed from said prices.

7. Jewel discontinued purchasing in the Chicago area, and in other parts of Illinois, fresh milk products from Borden on August 29, 1955. Jewel began at that date to [fol. 724] purchase fresh milk products for its stores from Dean.

8. Discounts to A & P and Jewel were, in accordance with Exhibits B and C, computed on the basis of total sales of fresh milk products to all stores of these customers served by Borden's Chicago Milk Division in the Chicago area and in other parts of Illinois. The dollar amount of discount so computed was transmitted periodically to each of these two customers by means of single checks. Discounts were never paid to the individual stores operated by these customers.

9. Exhibits K and L, being a letter and price list of August 29, 1955 issued by Dean, were distributed by Dean to many of its independently owned store customers early in the morning of August 29, 1955. Copies of Exhibits K and L were in Borden's possession before it prepared and issued Exhibits D, E and F.

10. In preparing its price list dated August 29, 1955, Exhibit D, Borden copied the Dean price list shown on Exhibit L except for the price of gallons of milk.

11. Exhibit L sets forth the prices charged by Dean to many of its independently owned store customers from August 29, 1955 to September 5, 1955. On the latter date Dean reduced its price to many of its independently owned store customers on gallons of milk to 67¢, and with this change the prices listed on Exhibit L were charged many such customers by Dean during the remainder of September, 1955.

## B. REGULATIONS GOVERNING SALES OF MILK

12. The sale of fluid milk in the Chicago area is governed by the provisions of Section 8 of the Illinois Pasteurization Act, Ill. Rev. Stats., Ch. 56 $\frac{1}{2}$ , Sec. 122, and Section 46 of [fol. 725] the Illinois Graded Milk Act, Ill. Rev. Stats., Ch. 56 $\frac{1}{2}$ , Sec. 215.

13. The sale of fluid milk in the City of Chicago is subject to the provisions of Chapter 154, Sec. 15, and Chapter 130, Sec. 23.1 of the Municipal Code of Chicago, which provide as follows:

“154-15. All pasteurized milk and milk products shall be placed in their final delivery containers in the plant in which they are pasteurized, and all certified milk and milk products sold for consumption in the raw state shall be placed in their final delivery containers at the farm at which they are produced.

“Any milk or milk products sold in quantities of less than one gallon shall be delivered in standard milk bottles or in single service containers complying with standards prescribed in the unabridged form of the 1939 edition of the United States Public Health Service Milk Ordinance printed in Public Health Bulletin 220, as amended July 18, 1941, certified copies of which ordinance and amendment shall be on file in the office of the city clerk. Provided however, that nothing herein contained shall be construed to prohibit hotels, soda fountains, restaurants, and similar establishments from dispensing milk or milk products from sanitary dispensers approved by the board of health.

“The delivery of milk and milk products to, and the collection of milk and milk products containers from, quarantined residences shall be subject to the rules and regulations of the board of health.

(Amend. Coun. J. 3-16-44, p. 1621; 12-3-45, p. 4544)”

“130-23.1. All milk, fluid milk products, ice-cream, frozen custard, sherbet, ices and similar frozen desserts served, shall be obtained from sources approved by the board of health. Only grade A pasteurized milk and milk products shall be used.

“In the case of milk drinks prepared, served or sold, the milk used shall include the entire contents of the

original container, or shall be from an approved bulk dispenser. All milk drinks shall be mixed in a sanitary manner.

[fols. 726-729] "All milk and fluid milk products shall be served in the individual original containers in which they were received from the distributor, or from a bulk container equipped with an approved dispensing device complying with the following specifications:

- (a) It shall comply with the requirements of section 130-22, pertaining to the construction of utensils and equipment.
- (b) No surfaces with which milk or milk products come in contact, except the delivery orifice, while the dispenser is in use, shall be accessible to manual contact, droplet infection, dust, or flies.
- (c) All parts of the dispenser with which milk comes in contact, including any measuring device, shall be cleaned and subjected to a bactericidal treatment at the milk plant where filled and not at the food dispenser's establishment.
- (d) The dispenser shall be filled and sealed with two seals at the milk plant in such a manner as to make it impossible to withdraw any of its contents without breaking one seal and impossible to replace any of its contents without breaking the other.
- (e) The dispensing device shall be so constructed as to automatically mix the milk and cream thoroughly with each dispensing operation except in the case of milk products which remain homogeneous without mixing. All milk and milk products and cream served from dispensers shall be kept at a temperature of 50° F. or less until served. In the enforcement of this requirement the board of health may make an exception in the case of cream served with coffee, cereals, etc. The board of health may permit the serving of cream from the original container or from a dispenser which complies with sub-paragraphs (a) and (b) of this section, and which can be filled in a sanitary manner, kept clean, and frequently subjected to bactericidal treatment complying with the require-

ments of section 130-26. (Added. Coun. J. 6-25-47, p. 456)."

Similar provisions are contained in the ordinances of the Village of Oak Park, Illinois, and of the Cities of Evanston, Wilmette, Kenilworth, Winnetka, and Glencoe, Illinois.

#### C. FACTS RELATING TO BULK WHOLESALE CUSTOMERS

[fol. 729a] 26. All deliveries by Borden in the Chicago area to the customers named on Schedule III are made from Borden's Chestnut Street branch. Borden operates 28 bulk wholesale routes out of its Chestnut Street Branch.

27. Borden's Chestnut Street branch is located at 312 West Chestnut Street. Raw Milk is received and processed at this plant, and distributed therefrom. Among the classes of customers served are hotels, restaurants, candy factories, bakeries, soup manufacturers, margarine manufacturers, and similar consumers of milk. No sales are made from [fols. 730-768] this branch to store customers, vendors, or individuals purchasing at retail.

28. The physical arrangement, equipment, and dock facilities of the Chestnut Street branch differ from those at other Borden branches in the Chicago area. These differences consist of adaptations to the type of business handled by this branch in order to effectuate economies.

29. All trucks operated from the Chestnut Street branch are large trucks which are different in design from those operated from the other Borden branches in the Chicago area. These trucks are specially equipped for the efficient handling of deliveries to the type of customer served. The trucks operated out of the Chestnut Street branch do not pick up products at any of the other Borden branches.

30. The drivers of the trucks operated out of the Chestnut Street branch are, by virtue of applicable labor contracts, compensated on a different basis than the drivers of trucks operated out of other Borden branches in the city.



[fol. 768a] 81. Exhibits YY through BBB are maps of the "loop area" of Chicago, Illinois.

#### F. STORE CUSTOMER COST SURVEY

82MD.\* For some time prior and subsequent to June, 1955, J. F. Malone was the District Controller of the Chicago Central District of Borden. He has subsequently become district operational analyst. In both capacities he has reported to O. N. Koenig, District Chairman of the Chicago Central District.

83MD. As District Controller, Mr. Malone had supervision over all of the accounting activities of the Chicago Central District and of the divisions comprising parts of that District. His responsibilities included, and still include, the making of surveys and related studies of costs.

84MD. Mr. Malone was first employed by Borden as a clerk in the Accounting Department in March, 1927. During the next eight years he filled various accounting clerical positions in the Accounting Department of what was then Borden Farm Products Company of Illinois, including the positions of property accountant, cost accountant, and general ledger accountant. He then became, in succession, office manager and chief accountant and controller of the Chicago Milk Division, vice president in charge of accounting and purchasing of the Chicago Milk Division, and then District Controller of the Chicago Central District. Mr. Malone was for several years chairman of the accounting advisory committee of the International Association of Milk Dealers, and is currently a member of the accounting committee of that Association.

[fol. 769] 85MD. Numerous cost studies, varying in extent, have been made under Mr. Malone's supervision. A study and survey similar to that described in subsequent paragraphs of this Order was made in 1949, and another in 1950.

86MD. Studies have also been made in other markets in which Borden operates dealing with similar elements of

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\* All numbered paragraphs designated as "MD" constitute summaries of the testimony of J. F. Malone given on deposition taken by plaintiff on January 15, 1957.

cost. None of these other studies were reduced to the same written form as the present study. They were studies on the part of management to ascertain the facts for use in setting management policies. These studies began approximately fifteen years ago and resulted from the shift that took place in the distribution of milk from retail to store wholesale sales, which occasioned the development of additional cost factors. These studies include a cost study made in the Chicago area on the distribution of ice cream, and other studies of distribution costs outside of the Chicago area but within the territory of the Chicago Central District.

87MD. The 1949 study and survey was based upon deliveries on the store wholesale routes operated out of the Englewood branch. The 1950 study and survey covered deliveries on the store wholesale routes operated out of the Irving Park branch.

88MD. The 1949 and 1950 studies were taken by management as confirming the facts as to the costs of distributing milk at wholesale as understood by management prior to the making of the studies. However, discount schedules to various classes of store wholesale customers had preexisted these studies.

89. Borden for many years has employed the firm of Haskins & Sells as independent auditors. In addition to the [fol. 769a] making of annual audits, Haskins & Sells is employed by Borden to make tests of accounting procedures, recommendations as to improvements in such procedures, and to make other special studies as requested.

90. In June, 1955, Mr. Malone was instructed by Mr. Koenig to re-study the difference between the cost of delivering fluid milk and milk products to Borden's corporate chain store customers in the Chicago area (as such area is defined in the Complaint) and the cost of delivering such products to different independent stores in the same area classified according to volume of purchases and discounts received under the Borden discount plan then in effect.

91. Mr. Malone thereupon caused a study of such costs to be made under his supervision during the five weeks beginning July 11, 1955, and ending August 13, 1955. In making this study, Mr. Malone used the services of regular

Borden employees, of persons temporarily employed to make time studies, and of Haskins & Sells.

92. The study thus made under the supervision of Mr. Malone will be referred to hereinafter in this Order as "the cost study."

93. The cost study did not include:

- a. the cost of raw milk, cream, and other dairy products and the procurement costs involved in purchasing such raw milk, cream, and other dairy products;
- b. the cost of transporting raw milk from points of procurement to bottling plants;
- [fol. 770] c. the cost of pasteurizing and otherwise processing such raw milk into finished products;
- d. the costs of packaging and storing such finished products prior to delivery; or
- e. the cost of containers and container facilities and supplies used in the packaging of such finished products.

The cost study was directed to the determination of the cost of distribution of fluid milk and milk products from the coolers at the distribution branches to store wholesale customers.

94. During the five-week period in which the cost study was made, time studies were made of various company activities relating to the distribution of fluid milk and milk products. The manner in which time studies were made is described in subsequent paragraphs of this Order.

95. Borden's deliveries of fluid milk and milk products in the Chicago area are made by Borden's Chicago Milk Division, which forms a part of Borden's Chicago Central District. The division main office is located at 3638 North Broadway, Chicago. In 1955, the Chicago Milk Division operated four distribution branches, known as the Englewood, Hammond, Irving Park and Chestnut Street branches.

96. No deliveries of fluid milk were made by the Hammond branch located at 402 Clinton Street, Hammond, Indiana, to customers inside the Chicago area as defined in the Complaint.

97. The Chestnut Street branch has been described in paragraphs 14-20 and 26-30 of this Order. No deliveries were made from this branch to store wholesale customers.

[fol. 771] 98. In July and August, 1955, the Englewood branch had 57 store wholesale routes, and the Irving Park branch had 77 store wholesale routes. During the various weeks of the survey, these routes served 1,576 store customer locations. The 134 wholesale routes operated out of the Englewood and Irving Park branches delivered, in July and August, 1955, 88.12% and 87.65%, respectively, of the total fluid milk and milk products delivered on all store wholesale routes by the entire Chicago Milk Division. By far the greater proportion of the deliveries of the Englewood and Irving Park branches were made in the Chicago area, the remainder being in nearby suburban areas.

99. Retail routes are also operated out of both the Englewood and Irving Park branches. Some of these routes serve a few store wholesale customers. In July, 1955, 133 store customer locations were served by these retail routes.

100. The Englewood branch is located at 320 West 70th Place, Chicago. It serves a territory in the City of Chicago bounded by Roosevelt Road on the north, Lake Michigan on the east, the city limits of Chicago on the south, and Cicero Avenue on the west. This branch also serves approximately 30 suburbs, including Blue Island, Harvey, Homewood, Oak Lawn, and Evergreen Park.

101. The Irving Park branch is located at 3014 North Tripp Avenue, Chicago. It serves a territory bounded by Roosevelt Road on the south, Lake Michigan on the east, the city limits on the west, and extends north as far as Lake Forest, including approximately 30 suburbs, such as Evanston, Des Plaines, and Park Ridge.

[fol. 772] 102. Borden identifies the various accounts maintained in its books of account by coded account numbers. The breakdown of accounts pertinent to the cost study, and their code number identification, is as follows:

a. *Breakdown by location.* Different locations or branches are assigned numbers. Those pertinent to the cost study are:

721—Englewood branch  
 723—Irving Park branch  
 730—Division main office  
 902—District main office

b. *Breakdown by type of expense.* Different functions of operations are assigned numbers. Those pertinent to the cost study are:

- 4—Division Main office—Accounting
- 12—District Main office—Tabulating Department
- 21—Division Main office—Credits and Collection Department
- 23—Selling and Delivery Expense—Branches
- 71—Automotive Expense—Branches

c. *Breakdown by type of operation.* Expenses incurred in different types of company operations are assigned numerical codes. The five types of operations conducted at the Englewood and Irving Park branches in July and August, 1955, and the code number assigned to each, are as follows:

- 1—retail
- 2—wholesale
- [fol. 773] 3—counter-vendor
- 4—handlers
- 5—cheese

d. *Breakdown by name of account.* Various subdivisions of the accounts are described by name, and each subdivision given a specific number. For example, that subdivision of an account to which route men's wages are charged is assigned the number 10.

103. The code numbers given to the breakdowns described above are given in the sequence listed. For example, the account given the code number 721-23-2-10 represents the salaries of routemen charged to wholesale delivery expense at the Englewood Branch.

104. The breakdown of costs between branches and between functions within a branch is on an actual basis and is supported by invoices and other records.

105. Branch accounting clerks are employed at both the Englewood and Irving Park branches. These branch accounting clerks make, or supervise the making of, reports and originate other accounting data which are entered on the books of account kept at the division main office.

106. A clerical staff is employed at the division main office under the supervision of the division controller of the Chicago Milk Division. Entries in the books of account are made by this staff.

107. Charges are made to the various classifications of accounts in accordance with standing written instructions.

108. The cost study as set forth in subsequent paragraphs [fol. 774] graphs of this Order discloses the cost and the allocations as between different types of wholesale customers of some or all of the expenses charged to the accounts designated as follows:

|                      |  |
|----------------------|--|
| 721 and 723—23-2-2   | Salaries—Office employees<br>(wage cost of branch clerical employees)                                      |
| 721 and 723—23-2-8   | Salaries—Senior Route Foremen (Route Supervisors, etc.)  |
| 721 and 723—23-2-9   | Salaries—Junior Route Foremen (Swingmen, Route Riders, etc.)   |
| 721 and 723—23-2-10  | Salaries—Routemen  |
| 721 and 723—23-2-34  | Extra Compensation—Routemen  |
| 721 and 723—23-2-47  | Salaries—Additional Vacation Labor   |
| 721 and 723—23-2-49  | Union Severance and Retirement, Health and Welfare Expense   |
| 721 and 723—23-2-123 | Provision for Bad Debts  |
| 721 and 723—23-2-126 | Branch and Route Waste   |
| 721 and 723—23-2-127 | Loss on Conversion of Route Returns  |
| 721 and 723—23-2-137 | Outside Statistical Service  |
| 721 and 723—23-2-227 | Insurance — Unemployment compensation—Federal Insurance  |
| 721 and 723—23-2-264 | Automobile Expense (This is a control account which covers the total expenses charged to type 71 accounts) |

|                      |  |
|----------------------|--|
| 721 and 723—23-2-268 | Transfer from Main Office Credit and Collection Expense (Charge from 730-3 Credit and Collection Department)   |
| 721 and 723—71-2     | Automobile Expense—Wholesale—Englewood and Irving Park. (All charges to this account except freight on leased trucks.) This account contains the details supporting the accounts 721-723-23-2-264. |
| 730—4-1              | Salaries-Administration  |
| 730—4-138            | Tabulating Department Charge   |
| 730—21-1             | Salaries-Supervision   |
| [fol. 775] 730—21-2  | Salaries—Office Employees  |
| 730—21-227           | Insurance — Unemployment Compensation and Federal Insurance  |
| 902—12—1             | Salaries—Supervision   |
| 902—12—2             | Salaries—Office Employees  |
| 902—12—225           | Rents Paid   |
| 902—12—227           | Insurance — Unemployment Compensation and Federal Insurance  |
| 902—12—305           | Transfers to other Departments   |

The various expenses covered by the above accounts are described more fully in subsequent paragraphs of this Order.

109. Expenses charged to the accounts listed below are not incurred with respect to store customers, and are not included in the cost study:

|                     |   |
|---------------------|---|
| 721 and 723—23-2-97 | Soda Straws (This cost is in connection with deliveries to drug stores, restaurants, and similar wholesale customers but not to store customers.) |
|---------------------|---|

721 and 723—23-2-171 Automatic Vending Machine Maintenance (Expense applicable to vending machines not placed on premises of store customers.)

110. The cost study as set forth in this Order does not show allocations to various classifications of store customers of the expenses charged to the accounts designated as follows:

|                                |   |
|--------------------------------|---|
| 721 and 723—23-2-1             | Salaries-Supervision  |
| 721 and 723—23-2-6             | Salaries-Salesmen and Solicitors  |
| 721 and 723—23-2-12            | Salaries-Platform men, Yardmen, Watchmen, and Shipping Clerks. (The major charges to this account are the wages of labor employed on the branch platforms in loading and unloading trucks.) |
| [fol. 776] 721 and 723—23-2-14 | Salaries—Chauffeurs and Helpers.  |
| 721 and 723—23-2-48            | Salaries—Miscellaneous (The Major charges to this account are the wages of demonstrators who conduct demonstrations and promotion of Borden products.)                                      |
| 721 and 723—23-2-51            | Ice Used (Cost of ice used in refrigerating milk in trucks)   |
| 721 and 723—26-2-62            | Service Clothing  |
| 721 and 723—23-2-94            | Coach Candles (The cost of candles used to keep milk warm in winter in unrefrigerated trucks.)  |
| 721 and 723—23-2-98            | Miscellaneous Materials and Supplies  |
| 721 and 723—23-2-101           | Office Expense  |



|                                 |  |    |
|---------------------------------|--|----|
| 721 and 723—23-2-102            | Telephone and Tel  | du |
| 721 and 723—23-2-107            |  |    |
| and 110                         | Gifts and Donations  |    |
| 721 and 723—23-2-111            | Traveling Expense  |    |
| 721 and 723—23-2-115            | Membership Fees and Dues in<br>Trade Associations, Clubs,<br>etc.  |    |
| 721 and 723—23-2-139            | Cashiers Overages and Short<br>ages  |    |
| 721 and 723—23-2-140            | Holdups  |    |
| 721 and 723—23-2-169            | Store Neon Signs—Cost and<br>Maintenance (Borden neon<br>signs are available to all<br>store customers.)                 |    |
| 721 and 723—23-2-190            | Glass Bottle Service Charge<br>(All stores handling gallon<br>jugs are given the same al-<br>lowance for handling them.) |    |
| 721 and 723—23-2-200            | Repairs to Building  |    |
| 721 and 723—23-2-201            | Repairs to Machinery and<br>Equipment  |    |
| 721 and 723—23-2-204            | Repairs to Office Equipment  |    |
| 721 and 723—23-2-225            | Rent Paid  |    |
| 721 and 723—23-2-228            | Insurance—Group Life and<br>Retirement Plan and<br>Health and Accident   |    |
| 721 and 723—23-2-229            | Insurance—Workmen's Com-<br>pensation  |    |
| [fol. 777] 721 and 723—23-2-230 | Insurance—Fire—<br>Plate Glass, etc.   |    |
| 821 and 723—23-2-236            | Taxes—Real and Personal<br>Property  |    |
| 721 and 723—23-2-238            | Taxes—Licenses—Other   |    |
| 721 and 723—23-2-240            | Depreciation on Buildings  |    |
| 721 and 723—23-2-241            | Depreciation on Machinery<br>and Equipment   |    |
| 721 and 723—23-2-258            | Expense Fund Disbursements   |    |
| 721 and 723—23-2-260            | Laundry  |    |
| 721 and 723—23-2-262            | Light, Heat, Power and Re-<br>frigeration  |    |
| 721 and 723—23-2-263            | General Sales Overhead   |    |

|                                 |   |
|---------------------------------|---|
| 721 and 723—23-2-265            | Special Accrual Overhead  |
| 721 and 723—23-2-294<br>and 298 | Miscellaneous Expense   |
| 721 and 723—23-2-299            | Advertising Allowance to<br>Stores (Available on same<br>terms to all store customers.) |

111MD. The accounts 721 and 723—23-2-6, "Salaries—Salesmen and Solicitors," is a standard account classification throughout Borden operations. No distinction exists between salesmen and solicitors in Borden's fluid milk operations in the Chicago area, although such a distinction may exist in connection with some of Borden's other operations.

112MD. In the Chicago area Borden solicitors solicit new accounts. In the store wholesale business there is a heavy turnover. Retail stores have a high mortality rate. Solicitors solicit the business of newly-opening stores. They also call upon existing accounts to investigate and see that the type of service rendered is that which the company policy dictates. Solicitors hear complaints from store customers. They check with store customers as to the quality of Borden [fol. 778] products. They assist in putting up store promotional displays, and distribute point-of-sale materials; they bring to the customer knowledge and information with regard to new products and new sales promotions. They discuss with store customers the financial situations of the latter with respect to past due accounts.

113MD. Borden solicitors in the Chicago area would not call on a chain store with respect to securing or maintaining that business.

114MD. The accounts 721 and 723—23-2-190, "Glass Bottle Service Charge," covers the costs in connection with the return of gallon jugs to Borden. Based on Mr. Malone's experience, he is of the opinion that, over a long period of time, the consumer demand for gallon containers in the Chicago area has been consistent as between independent stores and chain stores. Gallon jugs came into use in the Chicago area in the depression days.

115MD. Studies have been made by the Federal Market Administrator which, in Mr. Malone's opinion, show a relative consistency in consumer demand for such con-

ainers. At the present time, about a third of the milk sold to stores is purchased in gallon containers, about a third in half-gallon containers, and most of the rest of it in quart size and smaller containers. The percentages are about the same irrespective of the class of customer, and hence the proportion of milk sold in gallon containers to the chain stores is the same. The same relationships are also consistent as between chain stores and independent stores with respect to other types of containers in which fluid milk is [fol. 778a] sold in the Chicago area.

116MD. In Mr. Malone's opinion, it would be entirely proper to allocate all of the cost elements listed in paragraph 110 of this Order in proportion to the ascertainable direct costs to individual customers and classifications of customers, and that such method of allocation would be entirely consistent with, and fully justified by, standard cost accounting practices.

117MD. The cost study does not cover allocations to various classifications of store customers of the cost of goods sold, including manufacturing and processing costs.

118MD. The monthly record of costs of sales by units is prepared without respect to bulk wholesale, store wholesale, or retail, and hence these costs are equally applicable to store wholesale sales and to bulk wholesale sales. It would thus be possible to take the cost of sales and compute them customer by customer for the test period. To do so would require a great deal of labor, since it would require, with respect to each customer, a separate computation with respect to each item shown as delivered at a particular time to that customer on the forms which were kept during the survey. This computation would have to be preceded by a summarization of the daily quantity by item, by customer. This computation would require more than a hundred thousand separate computations.

119MD. Based on his experience, Mr. Malone is of the opinion that the pattern of purchases by store wholesale customers for resale does not vary substantially between classes of store customers. The reason for this is that consumers' buying habits determine the types of purchases made by the various store wholesale customers, and all classes of store wholesale customers are selling to the same type of consumer. In this respect the pattern of

purchases by store wholesale customers differs from that of the purchases by bulk wholesale customers, where a great deal of variance occurs between customers, depending upon the type of customer operation and the type of facilities which the bulk wholesale customer has.

120MD. The variance in bulk customer purchasing habits is illustrated as follows: Some bulk wholesale customers, such as De Met, which have bakery operations, will buy in quantities and container sizes suitable for their needs which would be entirely different from that of restaurant customers. Some restaurant customers will have facilities such as dispensers, and other restaurant customers will not. Some restaurant customers will furnish the consumer at their restaurants with milk in small individual containers, and others will serve milk to their customers only by the glass. Hence, some restaurant customers will make their purchases largely in half-pint sizes, and others will buy in bulk and in bulk dispenser cans. Some restaurants will make servings to customers of one-third of a quart, and others will make the individual servings half-pints, and the customer's practice in this respect will determine the type of unit purchases made.

121MD. For these reasons set forth in paragraphs 114-120 of this Order, the pattern of buying among bulk wholesale customers varies greatly, whereas the buying of store wholesale customers is somewhat more uniform.

[fol. 780] 122. Schedule XXIII, "Average Weekly Cost of Expenses not Allocated in Whole or in Part by the Cost Study as set forth in this Order," shows, with respect to the expenses charged to the accounts listed in paragraphs 109-110 of this Order, the total amount of such expenses for the twelve months ended July 31, 1955, as set forth in the books of account. The Schedule further shows the weekly average of such expenses computed by dividing the twelve months' figure by 52.

[fol. 781]

## SCHEDULE XXIII

Average Weekly Cost of Expenses Not Allocated In Whole or In Part by the  
Cost Study As Set Forth in This Order

| Account No.                   | Total for<br>Twelve<br>Months<br>Ended<br>July 31, 1955 | Weekly<br>Average |
|-------------------------------|---|-------------------|
| 721 and 723-23-2-1            | \$ 11,591 81  | \$ 222 98         |
| 721 and 723-23-2-6            | 107,423 01  | 2 065 81          |
| 721 and 723-23-2-12           | 467,579 61  | 8 991 92          |
| 721-23-2-14                   | 3,636 97  | 69 91             |
| 721 and 723-23-2-48           | 21,101 92   | 411 63            |
| 721 and 723-23-2-51           | 15,587 83   | 299 77            |
| 721 and 723-23-2-62           | 1,262 16  | 24 27             |
| 721 and 723-23-2-91           | 656 45  | 12 62             |
| 721 and 723-23-2-97           | 2,421 97  | 46 58             |
| 721 and 723-23-2-98           | 3,430 90  | 61 06             |
| 721 and 723-23-2-101          | 11,027 35   | 212 06            |
| 721 and 723-23-2-102          | 6,521 71  | 125 48            |
| 721 and 723-23-2-107 and 110  | 6,151 77  | 118 36            |
| 721 and 723-23-2-111          | 22,617 54   | 435 53            |
| 721 and 723-23-2-115          | 100 00  | 1 92              |
| 721 and 723-23-2-139          | (1 91)  | ( 01)             |
| 721 and 723-23-2-140          | 18 50   | 93                |
| 721 and 723-23-2-169          | 13,732 39   | 264 08            |
| 721 and 723-23-2-171          | 559 27  | 10 76             |
| 721 and 723-23-2-190          | 120,491 49  | 2 317 11          |
| 721 and 723-23-2-200          | 8,434 86  | 162 21            |
| fol. 782 721 and 723-23-2-201 | 1,420 33  | 27 31             |
| 721 and 723-23-2-201          | 297 43  | 5 72              |
| 723-23-2-205                  | 821 48  | 15 80             |
| 721 and 723-23-2-228          | 1,395 10  | 26 83             |
| 721 and 723-23-2-229          | 11,073 74   | 212 96            |
| 721 and 723-23-2-230          | 3,990 66  | 76 71             |
| 721 and 723-23-2-236          | 15,125 31   | 290 87            |
| 721 and 723-23-2-238          | 16,705 52   | 321 26            |
| 721 and 723-23-2-240          | 11,670 24   | 224 43            |
| 721 and 723-23-2-241          | 1,616 24  | 31 66             |
| 721 and 723-23-2-258          | 1,599 16  | 30 75             |
| 721 and 723-23-2-260          | 3,747 75  | 72 07             |
| 721 and 723-23-2-262          | 12,496 49   | 240 32            |
| 721 and 723-23-2-263          | 186,351 29  | 3 583 68          |
| 721 and 723-23-2-265          | 26,617 89   | 511 88            |
| 721 and 723-23-2-294 and 298  | 70,006 40   | 1 346 28          |
| 721 and 723-23-2-299          | 109,113 71  | 2 098 34          |

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 \$1,298,696 37      \$24,974 93

( ) Denotes Red Figures.

[fol. 782a] 123. Deliveries of fluid milk and milk products on the 134 wholesale routes operated by the Englewood and Irving Park branches are made by truck. Each wholesale route is operated six days a week, Monday through Saturday. One delivery a day is generally made to store locations. Some store locations receive deliveries on fewer than six days a week and in some cases, more than one delivery is made in a single day.

124. The trucks are pre-loaded at the branch by platform employees before the drivers report to work. The quantities loaded on the trucks are based on "load sheets" prepared by the drivers at the end of the previous day's business.

125. Emergency and other special deliveries are made from time to time to wholesale customers ordinarily served by the route trucks. These deliveries are made by a different truck (hereinafter referred to as the "special delivery truck"), and by a different driver (hereinafter called the "special delivery driver").

126. No deliveries of fluid milk and milk products were made to store wholesale customers on Sundays during the period of the cost study.

127MD. The total quantities of fluid milk delivered on the various routes vary in amount. In some instances, the variations are rather wide. These variations are due to the complexion of the route area served. The density of population in a given district affects the amount of purchases in that district. For example, a city route serving an area with a dense population can have a much larger volume than a route in a suburban area where much time has to be spent in traveling rather than in the [fol. 783] distribution of products. Chain stores tend to be concentrated in the areas with denser population.

128. The wholesale delivery trucks are regularly driven by employees called "routemen." Forty hours constitutes a week's work of five days for all routemen. No work is performed on Sunday and routemen take different days of the week for a day off in addition to Sundays.

129. On the routeman's day off, the truck is driven over his route by a relief driver, called a "junior or assistant route foreman." Borden employs one junior or assistant route foreman for every five wholesale routes. Junior or

assistant route foremen perform no other duties than to act as relief drivers for routemen. Other relief drivers handle the routes during vacations. Junior or assistant route foremen and other relief drivers work five days a week.

130. Routemen, junior or assistant route foremen, and vacation relief drivers drive the trucks, make deliveries, collect empty milk bottles and cases, pick up returned products, collect payment for products delivered, prepare sales tickets, hear complaints, and keep records and make reports related to such activities. The work of routemen and junior or assistant route foremen is described more fully in subsequent paragraphs of this Order.

131. Routemen and junior or assistant route foremen do little, if any, selling, and rarely, if ever, solicit prospective customers.

132. Routemen and relief drivers report to work at the branches each morning when on duty in accordance with a [fol. 784] prescribed schedule. They punch a time clock when they report to work and again when they leave work.

133. The operation of the 134 wholesale routes is checked and supervised by employees called "senior route foremen," each of whom on an average supervises 19 wholesale routes. Senior route foremen check to see that trucks are properly loaded, that deliveries are made on schedule, that returned products are properly stored or disposed of, and that records and reports are maintained and made properly by the routemen and relief drivers. In the event no relief drivers are available on a given day, the senior route foremen may handle the route on that day.

134. Periodically, senior route foremen ride on the route trucks, checking the entire route delivery operation as well as verifying customers' account balances as shown by the route books maintained by the routemen.

135. The 134 wholesale routes covered by the cost study served varying numbers of locations, some serving as few as seven locations, and others\* serving as many as 25 locations. The number of locations on a route is determined by many factors, including distance from the branch, distance between customers, customer service requirements, traffic conditions, and number of deliveries a day required by the customers.

136. Routes are arranged to permit the routeman or relief driver to perform his duties within an eight hour day, plus eating time amounting to a total of five hours per week. In the assignment of wholesale routemen to particular routes, seniority governs in accordance with the union contract referred to in the next succeeding paragraph [fol. 785] graphs of this Order. The prior union contract in effect in December, 1954 and March, 1955 contained the same provisions.

137. The compensation of wholesale routemen, senior route foremen, junior or assistant route foremen, relief drivers, and numerous other employees at the time of the cost study and during September, 1955 was fixed by the terms of a contract between Borden and Milk Wagon Drivers Union, Local 753, effective May 1, 1955, which contract replaced one between the same parties effective May 1, 1953.

138. The union contract requires Borden to give each covered employee with less than ten years' service a two week paid vacation each year, and each covered employee having ten years or more service a three week paid vacation each year, and after twenty-five years service a four week paid vacation each year.

139. The union contract further required Borden to contribute to union severance, pension, and health and welfare funds. These contributions were \$5.50 per covered employee and an additional \$5.00 for each routeman handling a route delivering more than 12,000 points per week. The union contract further requires Borden to pay overtime at time and one-half for hours worked in excess of 40 hours per week.

140. The prior union contract in effect in December, 1954 and March, 1955 also provided for paid vacations, for payments to union severance and pension funds, and for overtime for hours worked in excess of forty (40) hours per week.

141. In accordance with the provisions of the union contract, wholesale routemen are paid a fixed weekly wage [fol. 786] plus extra compensation computed on the basis of points delivered to route customers per week in excess of a fixed amount. The weekly base wage of wholesale routemen is either \$98 or \$99.50 for a forty hour week.



Extra compensation, if any, is paid monthly, and is computed as follows:

- a. For routemen receiving wages at the rate of \$98 per week, extra compensation is calculated on all points delivered to route customers at \$8.75 per 100 points or points in excess of 2057 up to 5486 points per week, and at \$9.00 per 100 points on all points delivered over 5486 per week.
- b. For routemen receiving wages at the rate of \$99.50 per week, extra compensation is calculated on all points delivered to route customers at \$8.75 per 100 points on all such points in excess of 2400 points per week up to 5829 points per week, and at \$9.00 per 100 points on all such points delivered over 5829 per week.
- c. On all package points delivered, extra compensation is calculated at \$0.01 per point.

(The union contract fixes the basic points for seven-day service, and provides that where six-day service is given, the basic points shall be six-sevenths of the figures stated in the contract. The basic points stated in this paragraph are six-sevenths of those stated in the contract.) The points delivered are computed for the full six days of each week, and include all points delivered to route customers, whether by the route truck driven by the routeman, relief driver, or by the special delivery truck. The extra compensation paid wholesale routemen is reduced by the amount of extra compensation paid to relief drivers operating the route trucks on the day or days the regular driver is off which is also computed on the basis of points delivered on the route, as described in the following paragraph.

142. In some cases, the routeman is guaranteed a minimum extra compensation, based on a guaranteed number of weekly points. The May 1, 1953 union contract which was in effect in December, 1954 and in March, 1955 provided for compensation on the same basis, except that during December, 1954 and March, 1955, the weekly base wages were \$3.00 per week lower.

143. In accordance with the provisions of the union contract, junior or assistant route foremen and other relief

drivers operating route trucks receive wages at the rate of \$105 per week. These employees also receive extra compensation calculated as follows: The total monthly extra compensation for each route is computed as provided in the preceding paragraph, and the average daily amount is then computed for each route by dividing the total by the days of the month on which the route was operated. The junior or assistant route foreman or other relief driver receives 60% of this daily average for each day on which he operated the route truck on each particular route. The extra compensation as to each route so computed is subtracted from that computed for the regular wholesale routeman. The prior union contract in effect in December, 1954 and March, 1955 contained the same provisions.

144. In accordance with the terms of the union contract, senior route foremen receive compensation of \$110 per week, and special delivery drivers receive compensation of \$97 per week. Neither senior route foremen nor special delivery drivers receive any extra compensation calculated [fol. 788] on points delivered except in those cases where they relieve the regular routeman. The prior union contract in effect in December, 1954 and March, 1955 contained similar provisions.

145. For purposes of the cost study, the store customers and other customers served by the 134 wholesale routes operated by the Englewood and Irving Park branches were divided into three main classifications:

- (a) Stores owned and operated by the Great Atlantic and Pacific Tea Company and by Jewel Food Stores, Inc. These stores will hereafter be called "chain stores". These two companies were the only corporate chains served by Borden's Chicago Milk Division in the Chicago area during the period of the cost study.
- (b) All other store wholesale customers. These stores will hereafter be called "independent stores".
- (c) All other wholesale customers, being restaurants, clubs, drug stores, bakeries, or similar types of customers who purchase fluid milk and milk products primarily for consumption on the premises. These customers will hereafter be called "non-store customers".

Each store, and each place at which a non-store customer does business, will hereafter be called a "location".

146. In addition to the classifications set forth above, independent stores were in turn classified in four classes, based on whether the individual store received no discount, or received discounts of 2%, 3%, or 4% under the Borden discount schedule in effect at the time of the cost study. [fol. 789] The Borden discount schedule to independent stores in effect during the period of the cost study was that set forth in Exhibit A.

147. The Borden discount schedules to A & P and Jewel in effect during the period of the cost study were those set forth in Exhibits B and C.

148MD. To the recollection of Mr. Malone, A & P and Jewel were customers of Borden in the Chicago area prior to 1936, although Jewel did not become so until after Mr. Malone was first employed in 1927.

149MD. Representation of the Chicago Milk operations with the chain stores since 1936 has, to the knowledge of Mr. Malone, been the responsibility successively of Mr. W. A. Baril, since deceased, then vice president in charge of sales of the Chicago Milk Division, Mr. O. N. Koenig, then holding the same position, Mr. W. N. Waterstreet, then and now president of the Chicago Milk Division, and Mr. H. R. Fagerson, then vice president in charge of sales of the Chicago Milk Division. Other individuals, generally assistants to the top sales personnel, may from time to time review merchandising and sales programs with A & P or Jewel, and make other personal contacts.

150MD. No time studies were made of the time of the executive and administrative employees in contacting the executive officers and other representatives of the chain stores. It would have been possible to have had such executives and administrative officers record time spent in telephone calls and personal contacts with chain stores and independent stores. However, in the opinion of Mr. Malone, during the limited period of time covered by the survey, activities of such a type could be disproportionate [fol. 790] to what actually takes place over the regular course of business during longer periods of time. A study

lasting as long as a year would probably average out such inconsistencies.

151MD. Mr. Malone states that, according to his observation over a long period of time, the major portion of the time spent by Borden executives and administrative employees is spent on the general operating problems of the business rather than on any individual account, and that, with respect to the time spent on particular customer activities, a greater proportion of such time is spent on problems of independent stores than the sales to such stores bear to the sales to chain stores. While many problems of individual independent stores are delegated to branch management, solicitors, and others, major policy decisions which require the time and attention of executive and administrative employees with respect to independent stores occur from day to day at an accelerated rate.

152MD. In connection with the 1949 and 1950 studies, Mr. Malone discussed with the executives and others concerned the time spent on chain store accounts versus independent accounts, and these conversations disclosed that the time spent by these officials in regard to chain stores was less than the amount of time spent in connection with independent stores.

[fol. 791] 153MD. Mr. Malone states that among the matters relating to independent stores which take up the time of Borden executives are problems of competitive pricing, complaints from independent store customers, and consideration of graduated discount programs for independent store customers. The records of Borden show the following with respect to the trend of its business with independent stores in the Chicago area:\*

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\* Year is given as of December 31. Actual sales figures on which this table is based have been revealed to counsel for plaintiff but because of the confidential nature of the figures, volume sales figures are expressed in appropriate percentages using 1947 as the basic year. The volume percentage for years 1947 through 1951 are estimates based on the actual number of independent stores served. The volume percentage for years 1952 through 1956 are based on actual sales figures.

| Year | Number of independent stores served | Volume of milk delivered to independent stores expressed in percentage |
|------|-------------------------------------|--|
| 1947 | 2209                                | 100.00%  |
| 1948 | 2338                                | 105.81   |
| 1949 | 2267                                | 102.63   |
| 1950 | 2258                                | 102.22   |
| 1951 | 2111                                | 95.65  |
| 1952 | 1925                                | 87.11  |
| 1953 | 1728                                | 78.92  |
| 1954 | 1520                                | 68.24  |
| 1955 | 1357                                | 60.19  |
| 1956 | 1224                                | 54.20  |

[fol. 792] In Mr. Malone's opinion, this decrease in independent store business has increased the number of problems and time spent by Borden executives on independent store problems.

[fol. 793] 154. Store customers purchasing milk for resale are assigned a store number for identification on Borden records. Non-store customers are not assigned such numbers.

155. In the course of the cost study, analyses of the time spent on route activities were made on each of the 134 store wholesale routes operated by the Englewood and Irving Park branches. Each route was studied for a full week. Thirty-two routes were studied during the week beginning July 11, 1955; twenty-six routes were studied during the week beginning July 18; twenty-six during the week beginning July 25; twenty-five during the week beginning August 1; and twenty-five during the week beginning August 8.

156. The time studies of the individual routes were made by men (hereinafter called "time study men"), some of whom were employees of Haskins & Sells, some of whom were regular employees of Borden, and the rest temporary employees of Borden hired specially to perform this specific service. Haskins & Sells made the studies of 42 of the 134 wholesale routes, regular Borden employees made the studies of 39 routes, and the specially employed men made the studies of the remaining 53 routes.

157. For purposes of the time studies made by the time study men, special report forms were prepared and printed. Exhibit I, consisting of one page, Exhibit II, consisting of two pages, and Exhibit III, consisting of two pages,

are copies of the report forms prepared for and used in the time studies of the routes. The items on all three exhibits are numbered in sequence, beginning with the number 1 on Exhibit I through number 143 on Exhibit III. [fol. 794] 158. Exhibit I is a report form calling for the minutes spent each day of the week by the routeman, or relief driver of the route truck in various types of activities. Item number 9, "Time on Route Stops," calls for a total of all time spent on the stops made at all route customer locations, which time is itemized on Exhibit II. One report on the form Exhibit I was made for the entire week for each route studied.

159. Exhibit II is a report form calling for the minutes spent in making every delivery to each wholesale customer on the route, broken down into types of activities performed. A report on form Exhibit II was made for each route customer. In some instances, because of the number of deliveries, more than one form Exhibit II was required in order to record the activities of the week of the study with respect to a single route customer.

160. Exhibit III is a report form calling for the quantities delivered to each customer of each product in each size of container. A report on form Exhibit III prepared in the manner described in paragraph 167 of this Order was made for each route customer covering the deliveries to such customer for the entire week in which the route was studied.





SUMMARY SHEET RE: WHOLESALE ROUTEMAN TIME ANALYSIS  
CHICAGO MILK DIVISION

Prepared By \_\_\_\_\_

Week Starting \_\_\_\_\_ Ending \_\_\_\_\_

Branch \_\_\_\_\_

1. Route No. \_\_\_\_\_

Truck No. \_\_\_\_\_

Routeman's Name \_\_\_\_\_

## Description of Operation

Time in Minutes

Insert Date -      1      2      3      4      5      6      7      Total

|   |  |  |  |  |  |  |  |                |
|---|--|--|--|--|--|--|--|----------------|
| 2. Time proceeding to Vehicle   |  |  |  |  |  |  |  |                |
| 3. Time checking Preloaded Vehicle  |  |  |  |  |  |  |  |                |
| 4. Time Icing Truck   |  |  |  |  |  |  |  |                |
| 5. Time Picking up Special Requirements                                     |  |  |  |  |  |  |  |                |
| 6. Time rearranging Load Before Leaving Branch                              |  |  |  |  |  |  |  |                |
| 7. Time for Breakfast   |  |  |  |  |  |  |  |                |
| 8. Time for Lunch   |  |  |  |  |  |  |  |                |
| 9. Time on Route Stops (From Store Route Delivery Time Analysis Exhibit II) |  |  |  |  |  |  |  |                |
| 10. Time Rearranging Load Before Checking in at Branch                      |  |  |  |  |  |  |  |                |
| 11. Time to Prepare - Waste Returns & Containers                            |  |  |  |  |  |  |  |                |
| 12. Time to Unload Empty Containers Returned                                |  |  |  |  |  |  |  |                |
| 13. Time to Unload & Receive Credit for Returned Mdse.                      |  |  |  |  |  |  |  |                |
| 14. Time to Store Stock Boxes   |  |  |  |  |  |  |  |                |
| 15. Time for Gasoline Loading   |  |  |  |  |  |  |  |                |
| 16. Time to Park Vehicle & Prepare Faulty Condition Report                  |  |  |  |  |  |  |  |                |
| 17. Time in Office to Prepare Daily Collection Slip                         |  |  |  |  |  |  |  |                |
| 18. Time in Office to Check Current Day's Sales                             |  |  |  |  |  |  |  |                |
| 19. Time in Office to Verify & Turn in Chain Store Tickets                  |  |  |  |  |  |  |  |                |
| 20. Time to Prepare Next Day's Order  |  |  |  |  |  |  |  |                |
| Time Required in Credit Office  |  |  |  |  |  |  |  |                |
| 21. On Independent Store Matters  |  |  |  |  |  |  |  |                |
| 22. On Chain Store Matters  |  |  |  |  |  |  |  |                |
| 23. Other Time Requirements (Specify)                                       |  |  |  |  |  |  |  |                |
| Time Lost to Vehicle Breakdown (24) Tires (25) Accidents (26) Motor Trouble |  |  |  |  |  |  |  |                |
| (Insert appropriate number in small block)                                  |  |  |  |  |  |  |  | 24<br>25<br>26 |
| 27. Unaccounted for Time  |  |  |  |  |  |  |  |                |

Remarks:

28. Totals

Hr. &amp; Min. Punched In

Hr. &amp; Min. Punched Out

Elapsed Time (Must agree with "Totals" Above)

29. % of Truck Capacity Used when Truck Ready for Route

Exhibit I



## EXHIBIT II

Week Starting \_\_\_\_\_ Ending \_\_\_\_\_

Prepared By \_\_\_\_\_

Routeman's Name \_\_\_\_\_

Truck No. \_\_\_\_\_ 30.

WHOLESALE ROUTE DELIVERY TIME ANALYSIS  
CHICAGO MILK DIVISIONExhibit II  
Page 1 of 2

Check One Name \_\_\_\_\_  
☐ Address \_\_\_\_\_  
☐ Cust. No. \_\_\_\_\_

| Description of Operations  | Insert Date - | Time in Minutes |   |   |   |   |   |   | Total          |
|--|---------------|-----------------|---|---|---|---|---|---|----------------|
|  |               | 1               | 2 | 3 | 4 | 5 | 6 | 7 |                |
| 34. Time to Drive From Branch to Edge of Route Area  |               |                 |   |   |   |   |   |   |                |
| 35. Mileage From Branch to Edge of Route Area (Show in Tenths, i.e. 1.7)   |               |                 |   |   |   |   |   |   |                |
| 36. Time to Drive from Edge of Route Area to 1st Stop (If this is 1st Stop)  |               |                 |   |   |   |   |   |   |                |
| 37. Mileage From Edge of Route Area to 1st Stop (If this is 1st Stop)  |               |                 |   |   |   |   |   |   |                |
| 38. Time to Drive From Previous Customer Stop (If this is Not 1st Stop)  |               |                 |   |   |   |   |   |   |                |
| 39. Mileage From Previous Customer Stop (If this is Not 1st Stop)  |               |                 |   |   |   |   |   |   |                |
| Time Waiting (40) To Park (41) For Store to Open (42) For Loading Platform<br>(Insert appropriate number in small block)         |               |                 |   |   |   |   |   |   | 40<br>41<br>42 |
| 43. Time Assembling Mdse. to be Delivered to Store   |               |                 |   |   |   |   |   |   |                |
| 44. Time Delivering Mdse. to Store   |               |                 |   |   |   |   |   |   |                |
| 45. Time Assembling Additional Mdse. to be Delivered to Store  |               |                 |   |   |   |   |   |   |                |
| 46. Time Delivering Additional Mdse. to Store  |               |                 |   |   |   |   |   |   |                |
| 47. Time to Stack & Pack Mdse. in Store Ice Box  |               |                 |   |   |   |   |   |   |                |
| 48. No. of Trips from Truck to Ice Box to Complete Delivery Re. in 44 & 46   |               |                 |   |   |   |   |   |   |                |
| 49. Time to Collect and Verify Returned Mdse. in Store   |               |                 |   |   |   |   |   |   |                |
| 50. Time to Collect and Verify Empty Bottle Returns  |               |                 |   |   |   |   |   |   |                |
| 51. Time to Prepare Sales Ticket   |               |                 |   |   |   |   |   |   |                |
| Time to (52) Secure COD (53) Collect Credit Pay't. (54) Customers Signature<br>(Insert Appropriate Number in small block)        |               |                 |   |   |   |   |   |   | 52<br>53<br>54 |
| 55. Time to Remove Returned Mdse. from Store to Truck  |               |                 |   |   |   |   |   |   |                |
| 56. Time to Stack Returned Mdse. in Truck  |               |                 |   |   |   |   |   |   |                |
| 57. Time to Remove Empty Bottles from Store to Truck   |               |                 |   |   |   |   |   |   |                |
| 58. Time to Stack Returned Bottles in Truck  |               |                 |   |   |   |   |   |   |                |
| Time to Further Service Cust. (59) Sales Promotion (60) Complaints (61) Gen. Conv.<br>(Insert appropriate number in small block) |               |                 |   |   |   |   |   |   | 59<br>60<br>61 |
| 62. Time to Enter Delivery in Route Book   |               |                 |   |   |   |   |   |   |                |
| 63. Time for Other Purposes (Specify Reason)   |               |                 |   |   |   |   |   |   |                |
| 64. Time from Last Stop to Branch (If this is Last Stop)   |               |                 |   |   |   |   |   |   |                |
| 65. Mileage from Last Stop to Edge of Route Area (If this is Last Stop)  |               |                 |   |   |   |   |   |   |                |
| 66. Mileage from Edge of Route Area to Branch (If this is Last Stop)   |               |                 |   |   |   |   |   |   |                |
| Grand Totals - All Lines   |               |                 |   |   |   |   |   |   |                |
| Total Minutes-Lines 34, 36, 38, 40 through 47, 49 through 64   |               |                 |   |   |   |   |   |   |                |
| Total Mileage-Lines 35, 37, 39, 65, & 66   |               |                 |   |   |   |   |   |   |                |
| Total Trips, Line 48   |               |                 |   |   |   |   |   |   |                |
| Total Minutes, Miles & Trips (Must Agree with Grand Totals Above)  |               |                 |   |   |   |   |   |   |                |

67. Number of Stops (No. of Times within Week that Routeman Called on Store)  
 68. Days Served (No. of Days within Week that Routeman Called on Store)  
 Miscellaneous (Place check mark of figure where appropriate. ANSWER ALL ITEMS)

Exhibit II  
 Page 2 of 2

- Item Wall Display Installed 69 Yes ☐ 70 No ☐  
 Neon Sign Installed 71 Yes ☐ 72 No ☐  
 Window Display Installed 73 Yes ☐ 74 No ☐  
 75. Number of Feet From Truck Unloading Point to Store Entrance Used \_\_\_\_\_ Feet  
 76. Number of Feet From Store Entrance used to Ice Box \_\_\_\_\_ Feet  
 Floor Level on which Store is Located 77 Basement ☐ 78 Ground Floor ☐ 79 Second Floor ☐  
 Type of Ice Box Used 80 Display Case ☐ 81 Walk in Cooler ☐ 82 Regular Ice Box ☐  
 Is this a Split Stop (Also Served by Another Milk Co.) 83 Yes ☐ 84 No ☐  
 85. Distance to Nearest A & P Store (If this is not an A & P Store) \_\_\_\_\_ City Blocks  
 86. Distance to Nearest Jewel Store (If this is not a Jewel Store) \_\_\_\_\_ City Blocks  
 87. Distance to Nearest Chain Store Other Than A & P or Jewel \_\_\_\_\_ City Blocks 88 Name of Chain \_\_\_\_\_  
 How is Mdse. Delivered to This Store Handled:

89. Manually  
 90. Hand Truck  
 91. Dolly  
 92. Other (Specify)

Indicate on the Diagram Below the Locations of the Entrance to this Store, and that of the Ice Box. Use an "E" (93) for Entrance Location and an "X" (94) for Box Location.

95. What is the greatest width at any Point in the Aisle or Aisles used Proceeding from the Store Entrance to Ice Box \_\_\_\_\_ Feet  
 96. What is the Narrowest Width at any Point in the Aisle or Aisles Used Proceeding from the Store Entrance to Ice Box \_\_\_\_\_ Feet

|   |    |    |    |    |    |    |    |    |    |    |    |    |
|---|----|----|----|----|----|----|----|----|----|----|----|----|
| F | 1  | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 |
| R | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| O | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 |
| N | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 |
| T | 49 | 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 |

Instructions: The above data is to be recorded for each store on each route each day. If delivery is made to more than one store without moving the vehicle, record the time elements under description of operations for each store separately.

If more than one stop is made at one store in one day enter the time elements for each stop separately under description of operations and circle the figures covering the second stop.

## DAILY SALES RECORD

Branch \_\_\_\_\_  
 Week Starting \_\_\_\_\_ Ending \_\_\_\_\_  
 Prepared By \_\_\_\_\_ Name \_\_\_\_\_  
 97. Route Number \_\_\_\_\_ Address \_\_\_\_\_  
 Routeman Name \_\_\_\_\_ 98. Customer Number \_\_\_\_\_

Exhibit III  
 Page 1 of 2

Check

One

☐☐☐

99. Independent Store (A single store whose Management does not control another similar store)  
 100. Chain Store (1 of 2 or more stores under same Management)  
 101. Miscellaneous (single establishment other than a store such as Club, Restaurant or Bulk Stop)

| Product             |          | Size | Sales |    |      |    |       |    |      |    |       |    |      |    |      |    | Returns |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
|---------------------|----------|------|-------|----|------|----|-------|----|------|----|-------|----|------|----|------|----|---------|----|------|----|------|----|-------|----|------|----|-------|----|------|----|------|----|-------|--|
|                     |          |      | Sun.  |    | Mon. |    | Tues. |    | Wed. |    | Thur. |    | Fri. |    | Sat. |    | Total   |    | Sun. |    | Mon. |    | Tues. |    | Wed. |    | Thur. |    | Fri. |    | Sat. |    | Total |  |
|                     |          |      | Gl    | Pa | Gl   | Pa | Gl    | Pa | Gl   | Pa | Gl    | Pa | Gl   | Pa | Gl   | Pa | Gl      | Pa | Gl   | Pa | Gl   | Pa | Gl    | Pa | Gl   | Pa | Gl    | Pa | Gl   | Pa | Gl   | Pa |       |  |
| 102. Homo. or V.D.  | Qts.     |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 103. " "            | 1/2 Gal. |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 104. " "            | Gal.     |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 105. " "            | Pts.     |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 106. " "            | 1/3 Qts. |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 107. " "            | 1/4 Pts. |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 108. Fortified Skim | 1/2 Gals |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 109. " "            | Qts.     |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 110. Half & Half    | Pts.     |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 111. " "            | Gal.     |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 112. Triple Whip    | Gal.     |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 113. Super Whip     |          |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 115. XX Cream       | Qts.     |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 116. " "            | 1/4 Pts. |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 117. Cream          | Gal.     |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 118. " "            | Qts.     |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 119. " "            | Pts.     |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 120. " "            | 1/2 Pts. |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 121. Sour Cream     | 12 Oz.   |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 122. " "            | 8 Oz.    |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 123. Chocolate      | Qts.     |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 124. " "            | 1/3 Qts. |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 125. " "            | 1/4 Pts. |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 126. Buttermilk     | Qts.     |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 127. " "            | 1/3 Qts. |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 128. " "            | 1/4 Pts. |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 129. Cottage Cheese | 16 Oz.   |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 130. " "            | 12 Oz.   |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 131. " "            | 8 Oz.    |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |
| 132. " "            | 9 Oz.    |      |       |    |      |    |       |    |      |    |       |    |      |    |      |    |         |    |      |    |      |    |       |    |      |    |       |    |      |    |      |    |       |  |



Exhibit III  
Page 2 of 2

[illegible]



[fol. 800] 161MD. Exhibits I, II, and III were originally designed to obtain as complete information as possible for making cost allocations. At the time these Exhibits were prepared no decision had been made as to how the allocation of costs should be made for purposes of this study. These Exhibits were designed to implement the cost survey with records which would give the greatest amount of information. That portion of Exhibit III relating to merchandise returned was not completed by the time study men while on the routes.

162. The headings of the various report forms were filled in by the time study men. The headings so filled in included: the route number, truck number, branch, and routeman's name on Exhibit I; the name, address, and company number of each customer, the routeman's name, and the truck number on Exhibit II; and the branch, the name, address, and company number of each customer, the route number, the routeman's name on Exhibit III. Report forms (Exhibit II and Exhibit III) for all customers on a route were, after the headings had been filled in, assembled and placed in a bound folder, together with the report form (Exhibit I) for the entire route. An adequate supply of blank report forms was included in each folder.

163. All time study men attended an orientation meeting prior to their assignment to routes, at which meeting the report forms (Exhibits I, II, and III), the study procedures to be followed, the route books, sales tickets and other reports required to be prepared by routemen, and the operation of a route were explained to them orally. A stop watch was furnished each time study man.

[fol. 801] 164. Time study men were instructed at this meeting to complete the blank forms in the bound folder. Time study men were also instructed that they were to arrange the sequence of the sheets in the bound folders in the most efficient manner. Time study men were further instructed to record a complete breakdown of total time spent by routemen and other route drivers but that they were not to interfere in any way with the activities of the routemen or other route drivers.

165. Each routeman and relief driver was instructed by the branch manager or his assistant having supervision over him to serve his routes during the period of the time

study in a manner similar to his usual custom and practice.

166. For the six days of the week during which a time study man was assigned to a particular route, the time study man was with the routeman or his relief driver from the time when the routeman or relief driver reported for work until he left work and punched out on a time clock. By means of the stop watch, the various activities performed by the routeman or his relief driver was timed to the nearest full minutes, and the minutes contemporaneously recorded by the time study man on the report forms (Exhibits I and II).

167. The sales data for each store was entered by the time study man on the appropriate report form (Exhibit III), with the exceptions later noted. The data so entered was obtained from the sales tickets prepared by the routeman or relief driver in accordance with his regular procedure. However, in the case of chain stores, and of those independent stores which were on periodic billing basis, [fol. 802] the sales data was determined by branch clerks and later inserted on the report forms (Exhibit III) by Haskins & Sells. The data so entered by Haskins & Sells was compiled by Borden's branch clerical personnel from other records, including the route books. Furthermore, the time study man did not compute point values called for by the report forms (item 143 of Exhibit III).

168. Employees of Borden's divisional main office were assigned, one to the Englewood branch and one to the Irving Park Branch, to serve as supervisors over the time studies.

169. At the end of each day, the time study men submitted their report forms to these two supervisors for review of the procedures followed, and the correction of obvious errors. The time study supervisors at that time answered questions by the time study men relative to time study procedures.

170. At the end of each week, the time study men gave to these two supervisors the bound folders containing the report forms (Exhibits I, II, and III) which had been completed during the week.

171. Branch clerical personnel, under the direction of the branch clerical supervisors, computed the points daily on each sales ticket, and the time study men inserted the

amounts so computed on the report forms (item 143 of Exhibit III). (A copy of the sales ticket form constitutes Exhibit IV). Branch clerical personnel also prepared the sales data for chain stores and for those independent stores which were on a periodic billing basis which was later inserted on the report forms by Haskins & Sells.



[fol. 803]

EXHIBIT IV

**THE BORDEN COMPANY**  
CHICAGO MILK DIVISION  
STORE AND WHOLESALE SALES TICKET

Date \_\_\_\_\_

Route No. \_\_\_\_\_ Page No. \_\_\_\_\_

| QUANTITY |       | PRODUCT                  |           |
|----------|-------|--------------------------|-----------|
| PAPER    | GLASS |                          |           |
|          |       | Homo or V. D. Milk       | Qt. 1     |
|          |       | Milk                     | ½ Gal. 2  |
|          |       | Milk                     | Gal. 3    |
|          |       | Zero                     | ½ Gal. 4  |
|          |       | Fortified Skim Milk      | Qt. 5     |
|          |       | Gall Borden              | Qt. 6     |
|          |       | Gall Borden              | ½ Gal. 7  |
|          |       |                          | 8         |
|          |       | Sol Kerd Milk            | Qt. 9     |
|          |       | Golden Crest             | Qt. 10    |
|          |       | Half & Half              | Ph. 11    |
|          |       | Triple Whip - Redd Whip  | 12        |
|          |       | XXX Cream                | Qt. 13    |
|          |       | XXX Cream                | ½ Ph. 14  |
|          |       | Cream                    | Qt. 15    |
|          |       | Cream                    | Ph. 16    |
|          |       | Cream                    | ½ Ph. 17  |
|          |       | Sour Cream               | 12-Oz. 18 |
|          |       | Sour Cream               | 8-Oz. 19  |
|          |       |                          | 20        |
|          |       |                          | 21        |
|          |       | Chocolate                | Qt. 22    |
|          |       | Choco. Handi-Pak         | ½ Ph. 23  |
|          |       | Buttermilk               | Qt. 24    |
|          |       |                          | 25        |
|          |       | CREAM Cottage Cheese     | 8-Oz. 26  |
|          |       | CHIVE Cottage Cheese     | 8-Oz. 27  |
|          |       | PINEAPPLE Cottage Cheese | 8-Oz. 28  |
|          |       | CREAM Cottage Cheese     | 12-Oz. 29 |
|          |       | CHIVE Cottage Cheese     | 12-Oz. 30 |
|          |       | PINEAPPLE Cottage Cheese | 12-Oz. 31 |
|          |       | CREAM Cottage Cheese     | 16-Oz. 32 |

**THE BORDEN COMPANY**  
CHICAGO MILK DIVISION  
WHOLESALE SALES TICKET  
3024 N. TRIPP AVE. CHICAGO 41, ILL.  
Avenue 3-1300

| Route No. | Page No. | Date                |        | Price | Amount |
|-----------|----------|---------------------|--------|-------|--------|
| Glass     | Paper    | Product             |        |       |        |
|           |          | Homo. or V.D.       | Qt.    |       |        |
|           |          | Homo. or V.D.       | ½ Gal. |       |        |
|           |          | Homo. or V.D.       | Gal.   |       |        |
|           |          | Homo. or V.D.       | Ph.    |       |        |
|           |          | Homo. or V.D.       | ½ Qt.  |       |        |
|           |          | Homo. or V.D.       | ½ Ph.  |       |        |
|           |          | Fortified Skim      | ½ Gal. |       |        |
|           |          | Fortified Skim      | Qt.    |       |        |
|           |          | Half & Half         | Ph.    |       |        |
|           |          | Triple Whip         | Gal.   |       |        |
|           |          | Super Whip          |        |       |        |
|           |          | Redd Whip           |        |       |        |
|           |          | XX Cream            | Qt.    |       |        |
|           |          | XX Cream            | ½ Ph.  |       |        |
|           |          |                     |        |       |        |
|           |          | Cream               | Gal.   |       |        |
|           |          | Cream               | Qt.    |       |        |
|           |          | Cream               | Ph.    |       |        |
|           |          | Cream               | ½ Ph.  |       |        |
|           |          |                     |        |       |        |
|           |          | Sour or But. Crm.   | 12oz.  |       |        |
|           |          | Sour or But. Crm.   | 8 oz.  |       |        |
|           |          | Chocolate           | Qt.    |       |        |
|           |          | Chocolate           | ½ Qt.  |       |        |
|           |          | Chocolate           | ½ Ph.  |       |        |
|           |          | Chocolate Handi-Pak |        |       |        |
|           |          | Buttermilk          | Qt.    |       |        |
|           |          | Buttermilk          | ½ Qt.  |       |        |

|    |                          |          |    |
|----|--------------------------|----------|----|
|    | AAA Cream                | 1/2 Pts. | 14 |
|    | Cream                    | Qts.     | 15 |
|    | Cream                    | Pts.     | 16 |
|    | Cream                    | 1/2 Pts. | 17 |
|    | Sour Cream               | 12-Oz.   | 18 |
|    | Sour Cream               | 8-Oz.    | 19 |
|    |                          |          | 20 |
|    |                          |          | 21 |
|    | Chocolate                | Qts.     | 22 |
|    | Choco. Handi-Pak         | 1/2 Pts. | 23 |
|    | Buttermilk               | Qts.     | 24 |
|    |                          |          | 25 |
|    | cream                    |          |    |
|    | Cottage Cheese           | 8-Oz.    | 26 |
|    | cream                    |          |    |
|    | Cottage Cheese           | 8-Oz.    | 27 |
|    | cream                    |          |    |
|    | Cottage Cheese           | 8-Oz.    | 28 |
|    | cream                    |          |    |
|    | Cottage Cheese           | 12-Oz.   | 29 |
|    | cream                    |          |    |
|    | Cottage Cheese           | 12-Oz.   | 30 |
|    | cream                    |          |    |
|    | Cottage Cheese           | 12-Oz.   | 31 |
|    | cream                    |          |    |
|    | Cottage Cheese           | 16-Oz.   | 32 |
|    | cream                    |          |    |
|    | Cottage Cheese           | 16-Oz.   | 33 |
|    | cream                    |          |    |
|    | Cottage Cheese           | 16-Oz.   | 34 |
|    | cream                    |          |    |
|    | STRAWBERRY or CHERRY     |          |    |
|    | Drink                    | Qts.     | 35 |
|    | Orange Drink             | Qts.     | 36 |
|    | Dry Curd                 | 12-Oz.   | 37 |
|    | Bakers Cheese            | Lbs.     | 38 |
|    | Egg Nog                  | Qts.     | 39 |
|    |                          |          | 40 |
|    | Yogurt                   | 1/2 Pts. | 41 |
|    | Number of Bottles In     |          | 42 |
|    | Number of 1/2 Gal. In    |          | 43 |
|    | Number of Gal. In        |          | 44 |
|    | Number of Cases In       |          | 45 |
|    | Number of Bottles Out    |          | 46 |
|    | Number of 1/2 Gal. Out   |          | 47 |
|    | Number of Gal. Out       |          | 48 |
|    | Number of Cases Out      |          | 49 |
| \$ | Retail Value Sales       |          | 50 |
| \$ | Net Container Charge     |          | 51 |
| \$ | Total Retail Value       |          | 52 |
| \$ | (Inc. Container Chg.)    |          |    |
| \$ | Wholesale Value of Sales |          | 53 |
| \$ | Net Container Charge     |          | 54 |
| \$ | Total Wholesale Value    |          | 55 |
| \$ | (Inc. Container Chg.)    |          |    |

D. F. 93 Spec. Rev. (9-58)

STORE  
STAMP  
HERE

Store Manager's Signature

3-1750

|       |                        |             |  |
|-------|------------------------|-------------|--|
|       | Super Whip             |             |  |
|       | Red. II Whip           |             |  |
|       | XX Cream               | Qts.        |  |
|       | XX Cream               | 1/2 Pts.    |  |
|       |                        |             |  |
|       | Cream                  | Gals.       |  |
|       | Cream                  | Qts.        |  |
|       | Cream                  | Pts.        |  |
|       | Cream                  | 1/2 Pts.    |  |
|       |                        |             |  |
|       | Sour or But. Crm.      | 12oz.       |  |
|       | Sour or But. Crm.      | 8 oz.       |  |
|       | Chocolate              | Qts.        |  |
|       | Chocolate              | 1/2 Qts.    |  |
|       | Chocolate              | 1/2 Pts.    |  |
|       | Chocolate Handi-Pak    |             |  |
|       | Buttermilk             | Qts.        |  |
|       | Buttermilk             | 1/2 Qts.    |  |
|       | Buttermilk             | 1/2 Pts.    |  |
|       | Cheese                 | 8 oz. Ctn.  |  |
|       | Cheese                 | 12 oz. Ctn. |  |
|       | Cheese                 | 16 oz. Ctn. |  |
|       | Cheese                 | oz. Gl.     |  |
|       | Cheese                 | 3 lbs.      |  |
|       | Cheese                 | Lbs.        |  |
|       | Bakers Cheese          | Lbs.        |  |
|       | Egg Nog                | Qts.        |  |
|       |                        |             |  |
|       | SUB                    | TOTAL       |  |
|       | Butter                 | Lbs.        |  |
|       |                        |             |  |
|       |                        | TOTAL       |  |
|       | CONTAINER CHARGE       |             |  |
|       | Qt. Bottles @ .02      | XXX         |  |
|       | 1/2 Gal. Bottles @ .05 | XXX         |  |
|       | Gal. Bottles @ .15     | XXX         |  |
|       | Boxes @ .25            | XXX         |  |
| TOTAL | Chg. Inc. CONTAINERS   |             |  |
|       | CONTAINER CREDIT       |             |  |
|       | Qt. Bottles @ .02      | XXX         |  |
|       | 1/2 Gal. Bottles @ .05 | XXX         |  |
|       | Gal. Bottles @ .15     | XXX         |  |
|       | Boxes @ .25            | XXX         |  |
| TOTAL | CONTAINER CREDIT       |             |  |
|       |                        | NET         |  |

Customer's Signature

[fol. 804] 172. Comptometer operators working under the direction of the two supervisors of the time studies, thereupon computed and entered the footings and crossfootings called for by the report forms (Exhibits I, II and III).

173. The bound folders containing the report forms so prepared constitute Borden Bulk Exhibit 4.

174. The sales tickets covering all deliveries by the routemen, relief drivers, or special delivery drivers to customers of each route during the week in which the route was surveyed constitute Borden Bulk Exhibit 5.

175. After the report forms (Exhibits I, II, and III) had thus been completed, the bound folders containing them were delivered to Workman Service, Inc., and independent organization providing clerical services. Employees of Workman Service then transferred the data contained in the report forms onto punched cards for use with International Business Machine Corporation equipment. (A copy of the card so used constitutes Exhibit VI).

[illegible]



[fol. 806] 176. The punched cards so prepared constitute Borden Bulk Exhibit 6.

177. Punched cards were prepared for Exhibit I for each route showing on each card the branch and route number. One of these pre-punched cards was then punched showing the data set forth on lines 2 through 28 from Exhibit I for each route.

178. Punched cards were prepared for Exhibits II and III for each route showing the following data on each card:

- a. Branch
- b. Route number
- c. Store classification (A & P, Jewel, Independent, and other non-store customers).
- d. Store number, if any

One of these cards was used to record the data for each location covered by the Exhibits II and III for each route as reported on lines 34 through 68 on Exhibit II and lines 142 and 143 on Exhibit III.

179. The dollar sales reported on line 143 of Exhibit III disclosed the weekly sales to each store. The points shown on the Borden discount schedule there in effect were expressed in the terms of equivalent sales dollars. Each set of cards prepared from Exhibits II and III was gang-punched with the dollar-bracket code (i.e., \$00.00 to \$30.99, etc.)

180. The total elapsed time in minutes spent by all routemen and relief drivers accounted for on the report forms (line 28, Exhibit I) was then computed by use of the punched cards. The total time spent by the routemen and relief drivers for breakfast and lunch (lines 7 and 8, Exhibit I) was also computed, and subtracted from the previous over-all total. The remainder was 376,864 minutes.

181. Schedule XXIV, "Computation of Extra Compensation Paid on the Basis of Points Delivered on Surveyed Routes," was computed as follows:

- a. The total points delivered on each route, for the week during which the route was studied (line 143 of Exhibit III) were tabulated from the report forms by use of the punched cards. Also included

are the points delivered by the special delivery drivers as shown in the report forms (Exhibit III) constituting Borden Bulk Exhibit 8. These special delivery points were computed in the manner described in paragraphs 215-7 of this Order. The total for all 134 routes appears in line 1 of Schedule XXIV.

- b. By reference to the payroll records, the identity of wholesale routemen receiving a guaranteed extra compensation, and the points upon which such guarantee was based, was ascertained by Haskins & Sells. The data so ascertained was as follows:

| Week Ended   | Route No. | Guaranteed Points | Points Sold   |
|--|-----------|-------------------|---------------|
| July 30, 1955 .....                                  | 26        | 13,247            | 7,383         |
| July 30, 1955 .....                                  | 155       | 13,662            | 13,233        |
| July 16, 1955 .....                                  | 187       | 14,298            | 13,444        |
| July 30, 1955 .....                                  | 199       | 18,528            | 15,952        |
| Total .....  |           | 59,735            | <u>50,012</u> |
| Less Points Sold .....                               |           | <u>50,012</u>     |               |
| Points guaranteed over actual points delivered ..... |           | <u>9,723</u>      |               |

[fol. 807a] c. The weekly points delivered on each route which was covered by a guarantee was then compared with the number of points on which the guarantee was based. In those instances, where the total points delivered during the week were less than the guarantee, the guarantee prevailed. This guarantee was the equivalent of 9,723 points as shown on line 2 of Schedule XXIV.

- d. The point guarantees were then added to the total points delivered. The total thus obtained appears at line 3 of Schedule XXIV.
- e. The package points delivered on each route for the same weeks (lines 129 through 140 of Exhibit III) were manually computed direct from the report forms by Haskins & Sells. The total of the package points for all 134 routes appears at line 4 of Schedule XXIV.

- f. The package points delivered, as set forth at line 4, was then subtracted from the total points, and the remainder appears at line 5 as the total number of compensation points.
- g. By reference to Borden's payroll records, the basis for computing the extra compensation of each of the 134 wholesale routemen (whether by method a or method b as described in paragraphs 141-2 of this Order) was ascertained by Haskins & Sells. Thirty-six of the routes were on the basis of method [fol. 808] b, and the remainder were on the basis of method a.
- h. The total amounts required to be delivered on each route before extra compensation under method a would be calculated (2957) was then multiplied by the number of routes (98) to obtain the total number of regular base points required to be delivered before extra compensation would be calculated. The resulting figure is that stated on line 6 of Schedule XXIV.
- i. For the routes on which extra compensation was calculated under method b, the number of base points (2400) was multiplied by the number of routes (36) to obtain the total number of base points required to be delivered before extra compensation would be calculated. The resulting figure is that stated on line 6 of Schedule XXIV.
- j. The total of basic points required to be delivered was calculated by adding lines 6 and 7 of Schedule XXIV, the total appearing at line 8. This last total was then subtracted from the total of compensation points delivered appearing at line 5 to obtain the total number of points (other than package points) on which extra compensation was calculated. This total appears at line 9.
- k. Haskins & Sells then computed for each route the total amount of points delivered less package points, [fol. 809] and then for each route determined the excess of such points over the base points but less than 5486 or 5829 whichever was applicable. The results thus obtained route by route were then added. The total thus obtained appears at line 10, as the



total number of points on which extra compensation was calculated at \$.75 per hundred points.

- l. By subtracting the number of points subject to extra compensation at \$.75 per hundred from the total number of points on which extra compensation was calculated, the number of total points on which extra compensation was calculated on the basis of \$.90 per hundred was obtained. This figure appears at line 11.
- m. The extra compensation payable at \$.75 per hundred points and at \$.90 per hundred points was then computed. These computations appear at lines 12 and 13 and the total at line 14.
- n. Extra compensation was then figured on the package points (as shown at line 4) at \$1.00 per hundred points. The result is given at line 15.
- o. The total extra compensation payable on the 134 routes for the week on which each route was studied was then computed by adding lines 14 and 15. This total appears at line 16.

[fol. 809a]

#### SCHEDULE XXIV

Computation of Extra Compensation Paid on the Basis  
of Points Delivered on Surveyed Routes

|  |         |                    |
|--|---------|--------------------|
| 1. Total points delivered on all routes during week in which route was studied |         | 1,470,326          |
| 2. Points guaranteed over actual points delivered on routes                    |         | 9,723              |
| 3. Total   |         | 1,460,603          |
| 4. Package points delivered  |         | 93,864             |
| 5. Compensation points delivered   |         | 1,366,739          |
| 6. Regular base points: (98 times 2057)  | 201,586 |                    |
| 7. Regular base points: (36 times 2400)  | 86,400  |                    |
| 8. Total   |         | 287,986            |
| 9. Points on which extra compensation was calculated                           |         | 1,078,753          |
| 10. Points subject to \$.75 per hundred rate                                   |         | 449,486            |
| 11. Points subject to \$.90 per hundred rate                                   |         | 648,714            |
| 12. Extra compensation at \$.75 per hundred rate                               |         | \$3,371.16         |
| 13. Extra compensation at \$.90 per hundred rate                               |         | 5,838.51           |
| 14. Total  |         | \$ 9,209.67        |
| 15. Extra compensation on package points                                       |         | 938.64             |
| 16. Total  |         | <u>\$10,148.31</u> |

[fol. 810] 182. Schedule XXV, "Computation of Direct Labor Costs of Wholesale Route Operations," shows:

*first: Routemen's Wage Cost.* The total weekly wages paid the routemen for the week in which the routes were studied, exclusive of overtime, was ascertained from Borden payroll records. The amounts were as follows:

|            |            |           |             |
|------------|------------|-----------|-------------|
| Week ended | July 16,   | 32 routes | \$ 3,149.50 |
| " "        | July 23,   | 26 "      | 2,558.50    |
| " "        | July 30,   | 26 "      | 2,532.90    |
| " "        | August 6,  | 25 "      | 2,462.00    |
| " "        | August 13, | 25 "      | 2,463.50    |
| <hr/>      |            |           |             |
| Totals     | 134 routes |           | \$13,166.40 |
| <hr/>      |            |           |             |

This total appears at line 1 of Schedule XXV.

*second: Junior or Assistant Route Foremen's Wage Cost.* The wage cost for the driver of the truck on the relief day of the week was computed by taking the weekly wage rate of a junior or assistant route foreman or relief driver (\$105) and dividing by five to obtain a daily rate (\$21), exclusive of overtime. The total cost for the 134 routes for the week in which each route was studied was then computed as 134 times the daily rate (\$21), or \$2,814. This figure appears at line 2 of Schedule XXV.

*third: Senior Route Foremen's Wage Cost.* The wage cost for these employees was computed by taking the number of senior route foremen required to supervise the 134 wholesale routes (7), and multiplying by the weekly rate, exclusive of overtime (\$110). The resulting figure (\$770) appears at line 3 of Schedule XXV.

[fol. 811] *fourth: Contributions to union severance, pension, and health and welfare funds.* The contributions for wholesale routemen (\$5.50 per routemen per week plus \$5.00 per week for each route handling over 12,000 compensation points per week) were first computed by ascertaining from the report

forms (Exhibit III) the number of routes (37) on which more than 12,000 compensation points were delivered during the week the route was studied. The total contributions were then computed as  $134 \times \$5.50$ , or \$7.37, plus  $37 \times \$5.00$ , or \$185; or a total of \$922. This amount appears at line 4a of Schedule XXV.

The contribution for junior or assistant route foremen (27) required to operate 134 route trucks on the sixth day of the week was computed as 27 times \$5.50, or \$148.50. This appears at line 4b of Schedule XXV.

The contribution for senior route foremen was computed at 7 times \$5.50, or \$38.50. This appears at line 4c of Schedule XXV.

The total of these three items (\$1,109) appears at line 4d of Schedule XXV.

*fifth:* *Cost of vacations.* Haskins & Sells ascertained from Borden personnel records that 4 of the 134 wholesale routemen were entitled to two weeks vacation only, and that the remaining 130 were entitled to three weeks vacation. Of the four routemen entitled to two weeks vacation, three received weekly wages of \$98 and one received [fol. 812] a weekly wage of \$99.50. The total weekly wages of the four routemen were computed as 3 times \$98, plus one times \$99.50, or a total of \$393.50. The total annual cost of the vacations for these four men was computed as 2 times \$393.50, or \$787. Of the remaining 130 routemen, 35 received a weekly wage of \$99.50, and 94 received a weekly wage of \$98 and one man earned \$78.40. The total vacation cost for these 130 routemen was computed as \$38,318.70.

All 27 junior or assistant route foremen were entitled to three weeks vacation. The total annual cost of these vacations was computed as 3 times the weekly wage rate of \$105 times 27, or \$8,505.

Senior route foremen are not replaced during their vacations, and no vacation cost was computed for these employees.

The total vacation costs were then computed by adding the three totals previously obtained (\$787, \$38,318.79, and \$8,595), and dividing the grand total (\$47,610.79) by 52 to produce a weekly vacation cost of \$915.59. This figure appears at line 5 of Schedule XXV.

*sixth:* *Cost of state and federal unemployment insurance and federal old age and survivors' insurance, hereinafter called "social security costs."* All of the wholesale routemen, junior or assistant route foremen, and senior route foremen earn [fol. 813] more than \$4,200 per year. The effective rate paid by Borden for federal and state unemployment insurance is .5%. Total annual social security costs per each of the above employees were computed as follows:

|   |       |
|---|-------|
| Federal and state unemployment insurance .5% of \$3,000 | \$15  |
| Federal old age and insurance benefits 2% of \$4,200    | 84    |
|   | <hr/> |
| Total yearly cost per employee                          | \$99  |

This amount of \$99 divided by 52 gives \$1.90 as a weekly social security cost per employee.

The total number of routemen, junior or assistant route foremen, and senior route foremen was 168 (134 plus 27, plus 7). The total weekly social security costs were computed as \$319.20 (168 times \$1.90), which is shown at line 6 of Schedule XXV.

*seventh:* *Cost of extra compensation.* The total cost of extra compensation computed as set forth in paragraph 181 of this Order and set forth at line 16 of Schedule XXIV appears as line 7 of Schedule XXV.

*eighth:* *Total labor costs of route operations.* The sum of the various items listed above appears at line 8 of Schedule XXV, and amounts to \$29,242.50.

*ninth:* *Total cost per minute of route activities.* The total minutes of route activities, computed as set forth

in paragraph 180, *supra*, appears at line 9 of Schedule XXV. The cost per minute of these activities, which appears at line 10 of Schedule XXV, was computed by dividing the total weekly [fol. 813a] cost of route labor by the total number of minutes of activities.

183MD. For purposes of this study, extra compensation has been treated as part of the overall wages earned by the men operating the routes during the survey period. In Mr. Malone's opinion, the method of computing extra compensation required by the union contract as explained in paragraphs 141-2 of this Order, is a device adopted by agreement after negotiation to determine the total overall wages earned by routemen in the performance of their total job responsibility, and is directly related to the total volume of deliveries to all stores on a route rather than to the volume delivered to particular individual stores. Each store naturally contributes to the total volume of deliveries made on the route which is the basis on which the extra compensation is calculated by the formula provided for in the union contract.

[fol. 814]

## SCHEDULE XXV

## Computation of Direct Labor Costs of Wholesale Route Operations

|  |               |
|--|---------------|
| 1. Total weekly wages of Routemen  | \$13,166.40   |
| 2. Total weekly wages of Junior or Assistant Route Foremen   | 2,814.00      |
| 3. Total weekly wages of Senior Route Foremen  | 770.00        |
| 4. Weekly contributions to union funds:  |               |
| a. for routemen  | \$922.00      |
| b. for junior route foremen  | 148.50        |
| c. for senior route foremen  | 38.50         |
| d. Total weekly contributions  | 1,109.00      |
| 5. Weekly vacation costs for routemen, junior or assistant route foremen, and senior route foremen | 915.59        |
| 6. Weekly social security costs  | 319.20        |
| 7. Total weekly extra compensation (from line 16 of Schedule XXIV)                                 | 10,148.31     |
| 8. Total direct labor costs  | \$29,242.50   |
| 9. Total minutes of route activities (from paragraph 180 of this Order)                            | 373,864       |
| 10. Cost per minute of route activities<br>(\$29,242.50 divided by 373,864)                        | \$ 0.07759430 |

[fol. 815] 184. The cost of the time spent on each route activity has in subsequent paragraphs and schedules of this Order been allocated to different classes of customers on one or the other of the following three bases:

- a. *Time basis.* In all cases where the time spent on an activity recorded in the report forms (Exhibit II) was spent at a specific customer location, the cost of the time spent has been directly allocated to that customer. This method of allocation will be hereafter identified as on a "time basis."
- b. *Location basis.* In other cases, where time was spent in an activity which did not relate directly to a specific customer location, but which was involved directly with the route operation, the cost of the time spent has been allocated by dividing the total cost by the total number of customer locations served by the 134 routes. This method of allocation will be hereafter identified as on a "location basis."
- c. *Stop basis.* In all other cases, where time was spent in an activity not directly related to a specific customer location, but which was involved directly with the route operation, the cost of the time so spent has been allocated by dividing the total cost by the total number of deliveries (other than special deliveries) made to customer locations during the weeks in which the routes were surveyed. This [fol. 815a] method of allocation will be hereafter referred to as on a "stop basis."

185. Set forth below are the specific activities of the routemen and relief drivers which were timed by the time study men, the item numbers given to these activities on the Schedules which follow, the line or lines of the report forms (Exhibits I and II) covering these specific activities, and the basis on which the cost of each activity was allocated. (Where the word "routeman" appears, it also applies to the junior or assistant route foreman or other relief driver.)

*Item 1. Proceeding to Vehicle.* (line 2 of Exhibit I)  
After punching the time clock, routemen proceed to their trucks. The cost of this activity was allocated on a location basis.

- Item 2. Checking Pre-Loaded Vehicle.* (line 3 of Exhibit I) After arriving at his truck, the routeman checks the volume of milk and milk products in his truck against the "load sheet" prepared by him on the previous day. The cost of this activity was allocated on a location basis.
- Item 3. Icing Truck.* (line 4 of Exhibit I) After checking the preloaded vehicle, the routeman procures additional ice and places it in his truck for refrigeration purposes. The cost of this activity was allocated on a location basis.
- Item 4. Picking Up Special Requirements.* (line 5 of Exhibit I) After icing the truck, the routeman procures and places in his truck any additional products required. The cost of this activity was allocated on a location basis.
- [fol. 816] *Item 5. Rearranging Load Before Leaving Branch.* (line 6 of Exhibit I) Before leaving the branch, the routeman rearranges the products in his truck to facilitate unloading at each location, taking into account the sequence of locations. The cost of this activity was allocated on a location basis.
- Item 6. Waiting to Park Vehicle.* (lines 40, 41, and 42 of Exhibit II) After arriving at a customer location, congestion on the street, failure of the store to be open, or previous occupancy of the customer's loading platform, may require the truck to stop and wait before parking to unload. The cost of this activity was allocated on a time basis.
- Item 7. Assembling Products to be Delivered to the Store.* (line 43 of Exhibit II) After parking to unload, the routeman assembles, at the side of the truck or on the loading platform, the products which he estimates will be required by the customer for that day. If a large volume of products is involved, the routeman will load them on a hand truck carried in the vehicle. Sometimes he will use a dolly truck if such is furnished by the store and if the volume justifies its use. Otherwise he manually carries the

products into the store. The cost of this activity was allocated on a time basis.

*Item 8. Delivering Merchandise to the Customer.* (line 44 of Exhibit II) After assembling the products as in Item 7, the routeman delivers them to the place in the store which the customer designates. [fol. 817] The cost of this activity was allocated on a time basis.

*Item 9. Assembling Additional Merchandise to be Delivered.* (line 45 of Exhibit II) Sometimes the customer will require more merchandise than the amount estimated by the routeman, or the amount to be delivered will require more than one trip from the truck. In either case, the merchandise required for the second trip must be assembled. The cost of this activity was allocated on a time basis.

*Item 10. Delivering Additional Merchandise to Store.* (line 46 of Exhibit II) This activity is the same in character as that of delivering the initial amount of merchandise. The cost of this activity was allocated on a time basis.

*Item 11. Stacking and Packing Merchandise in Store Ice-box.* (line 47 of Exhibit II) Many customers require that the merchandise not only be taken to a designated place in the customer's store, but that it be packed or stacked in display cases or refrigerated cabinets. The cost of this activity was allocated on a time basis.

*Item 12. Gathering Returned Merchandise in Store.* (line 49 of Exhibit II) City health rules or ordinances place a time limit within which milk and milk products must be sold. Merchandise then unsold is returned to Borden. This merchandise, and merchandise returned for other reasons, must be gathered by the routeman before being carried to his truck. The cost of this activity was allocated on a time basis.

*Item 13. Gathering Empty Bottles.* (line 50 of Exhibit II) When milk is purchased by stores in glass [fol. 818] bottles rather than paper containers the bottles returned to the store by consumers



have to be gathered by the routeman before being carried to the truck. The cost of this activity was allocated on a time basis.

*Item 14. Preparing Sales Ticket.* (line 51 of Exhibit II)

A sales ticket book is left with every customer. At the time of delivery, the routeman records in this book the quantities delivered, product by product. In the case of independent stores, he also computes the sales price of each product purchased, and the total sales price of each delivery, and enters these computed figures in the sales ticket book. In the case of the chain stores covered by this study, no such computations were made by the routeman; the necessary computations were made in the course of the centralized billing operation.

In all cases, the routeman removes one copy of the sales ticket, and leaves one copy in the book in possession of the customer.

The cost of this activity was allocated on a time basis.

*Item 15. Securing C. O. D. Payment.* (line 52 of Exhibit II)

The large majority of independent retail store customers pay for the merchandise when delivered. The chain stores covered by the study pay weekly on a centralized billing basis. Some of the independent stores are on a periodic payment basis. When customers are on a C. O. D. basis, the routeman collects the sales price at the time of each delivery. The cost of this activity was allocated on a time basis.

*Item 16. Collecting on Credit Accounts.* (line 53 of Exhibit II)

In the case of independent store customers to whom credit has been extended, the routeman makes periodic collections at the time of delivery. The cost of this activity was allocated on a time basis.

*Item 17. Securing Customer's Signature for Credit Deliveries.* (line 54 of Exhibit II)

When products are sold on a credit basis, the signature of the customer or the customer's manager on a receipt must be secured by the routeman. The

cost of this activity was allocated on a time basis.

- Item 18. Removing Returned Merchandise from Store to Truck.* (line 55 of Exhibit II) The cost of this activity was allocated on a time basis.
- Item 19. Stacking Returned Merchandise in Truck.* (line 56 of Exhibit II) The cost of this activity was allocated on a time basis.
- Item 20. Removing Returned Empty Bottles from Store to Truck.* (line 57 of Exhibit II) The cost of this activity was allocated on a time basis.
- Item 21. Stacking Returned Empty Bottles in Truck.* (line 58 of Exhibit II) The cost of this activity was allocated on a time basis.
- Item 22. Entering Deliveries in Route Book.* (line 62 of Exhibit II) At the time of each delivery, the quantities delivered must be entered in the Route Book carried by each routeman. The cost of [fol. 819] this activity was allocated on a time basis.
- Item 23. Complaints and General Conversation.* (lines 59, 60 and 61 of Exhibit II) Routemen are often called upon to receive oral complaints from customers as to service or other matters, or to listen to discussions of store problems or other matters. The cost of this activity was allocated on a time basis.
- Item 24. Rearranging Load.* (line 10 of Exhibit I) At various times, routemen rearrange the location in the truck of undelivered products, and returned merchandise and empty bottles, in order to facilitate subsequent deliveries. The cost of this activity was allocated on a stop basis.
- Item 25. Driving Time to and from Route Area.* (lines 34 and 64 of Exhibit II) Time is required to drive the truck from the branch to the edge of the route area, and from the last customer location served back to the branch. The cost of this activity was allocated on a location basis.
- Item 26. Driving Time on Route.* (lines 36 and 38 of Exhibit II) Time is required to drive the truck from the edge of the route area to the first cus-

tomers location served, and from one customer location to another. The cost of this activity was allocated on a stop basis.

- Item 27. Report of Waste Returns and Containers.* (line 11 of Exhibit I) Upon returning to the branch after completing deliveries, the routeman fills [fol. 819a] out a report showing the number of units of the defendant's fluid milk and milk products returned by each customer. The cost of this activity was allocated on a location basis.
- Item 28. Unloading Empty Containers.* (line 12 of Exhibit I) The cost of this activity was allocated on a location basis.
- Item 29. Unloading and Receiving Credit for Returned Merchandise.* (line 13 of Exhibit I) After completing the report of waste returns, the routeman removes all returned merchandise from the truck. He then gives a branch employee (called a "checker") the completed report and waits for the checker to verify the report against the number of units unloaded. The cost of this activity was allocated on a location basis.
- Item 30. Storing Stock Boxes.* (line 14 of Exhibit I) Un-sold merchandise left on truck at the end of the day must be put by the routeman in insulated boxes for over-night storage. The cost of this activity was allocated on a location basis.
- Item 31. Loading Gasoline.* (line 15 of Exhibit I) Routemen refuel their trucks at the end of the day. The cost of this activity was allocated on a stop basis.
- Item 32. Parking Truck.* (line 16 of Exhibit I) After refueling, the routeman parks his truck. The cost of this activity was allocated on a location basis.
- Item 33. Preparing Daily Collection Report.* (line 16 of Exhibit I) The routeman makes an entry on this report, showing his daily collections. The cost of this activity was allocated on a location basis.
- [fol. 820] *Item 34. Preparing Order for Next Day's Requirements.* (line 20 of Exhibit I) The routeman next prepares a report estimating the number of units of each product which will be required

- for delivery on the route next day. The cost of this activity was allocated on a location basis.
- Item 35. Checking Current Day's Sales Report.* (line 18 of Exhibit I) The routeman next checks the sales report, which shows the total products pre-loaded in the truck, the products returned by driver, and the remainder after the second item is subtracted from the first. The cost of this activity was allocated on a location basis.
- Item 36. Vehicle Breakdown.* (lines 24, 25 and 26 of Exhibit II) The cost of time spent because of tire trouble, motor breakdowns, or accidents was allocated on a stop basis.
- Item 37. Miscellaneous Time.* (lines 23 and 27 of Exhibit I and line 63 of Exhibit II) Time was spent on the routes due to happenings not covered by any of the items previously listed. The cost of this time was allocated on a stop basis.
- Item 38. Processing Chain Store Tickets at Branch Office.* (line 19 of Exhibit I) Sales tickets for chain stores are handled differently than sales tickets for other customers, due to the central billing of chain store customers. The cost of this activity was allocated entirely to the chain stores.
- [fol. 821] *Item 39. Credit Matters—Chain Stores.* (line 22 of Exhibit I) Time was also spent at the branch office relative to credit sales to chain stores. The cost of this activity was allocated entirely to chain stores.
- Item 40. Credit Matters—Independent Stores.* (line 21 of Exhibit I) The cost of this activity was allocated to the independent stores on a location basis.

186MD. In Mr. Malone's opinion, all of the cost elements referred to in Items 1, 2, 3, 4, 5, 25, 26, 31 and 36 of paragraph 185 of this Order, and the costs of operating the trucks described in paragraphs 108 and 225-8 of this Order may, since they are not susceptible of direct allocation on a time basis to specific customers, be allocated to such customers in proportion to the costs directly chargeable to such customers on a time basis.

187MD. Actual mileage in the route areas is not extensive. In Mr. Malone's opinion the costs involved in starting and stopping vehicles and in parking them are directly related to the number of stops, because these costs include wear and tear and gasoline consumption, all of which are much greater in connection with such activities than in the continued running of the truck after it has started.

188MD. In Mr. Malone's opinion an allocation of the cost elements referred to in paragraph 186MD of this Order based on volume, or on mileage, or on volume times the distance transported, would not reflect actual cost differences in the delivery of fluid milk and milk products to different customers. One reason why allocations have not been made on a mileage basis is that the distances between [fol. 821a] customers are irregular, accidental, and not proportionate to the volume of products delivered to the customers or to the location of the customer from the original point of distribution. Among other factors, volume and distance do not take into account the considerable portion of vehicle cost involved in starting, stopping, and parking. Furthermore, while the quantity delivered to one of the last stores visited on the route may have been carried over all the route, the store may actually be no farther from the plant than the first store visited.

189MD. However, Mr. Malone recognizes that some of the costs of transportation are related to the movement of the quantity of product a given distance.

190MD. Item 3, described in paragraph 185 of this Order, covering the time of routemen in icing their trucks, refers only to the activities of the routemen themselves in adding such incidental ice to the already iced trucks as is required at the time the truck is ready to leave for the route. It does not cover the cost of the ice charged to accounts 721 and 723-23-2-51 or the labor of branch employees in originally icing the truck, (included in the charges to accounts 721 and 723-23-2-12). Since the study did not include such costs, it in effect treated such costs as allocated on a volume basis.

191MD. The ice used in icing trucks is only occasionally given to customers, and those would be "bulk wholesale customers."

192MD. The amount of ice used in keeping trucks at a sufficiently cool temperature remains generally the same [fol. 822] whether the truck is full or empty.

193MD. The report of waste returns and containers referred to in Item 27 of paragraph 185 of this Order is a pegged sheet with all the products down the side. One such report is filled out covering all returns from all stores; no individual report is filled out with respect to each store. When an unsold, filled container is returned by a store, it is replaced without charge, so that the store billings are net. The report simply shows the route number, the date, and the total number of each item which has been returned. This item does not refer to returns of empty glass bottles or boxes.

194MD. In Mr. Malone's opinion, one reason why the costs represented by item 27 of paragraph 185 of this Order, which is a clerical activity performed by the routeman, should be, for purposes of this study, allocated on a location basis was that if every store had contributed some returns, the time of making out the report would be no greater than if half the stores made returns.

195MD. With respect to Item 28, described in paragraph 185 of this Order, the time required would depend upon the amount of returned empty glass bottles or boxes which the driver would have to take off his vehicle. Most of the containers used in the store wholesale business are paper containers rather than returnable glass bottles. No separate summary records are kept as to store sales as between paper and glass containers, so that the records as kept do not disclose what stores return the empty containers.

[fol. 823] 196MD. Mr. Malone states, with respect to items 34 and 35 described in paragraph 185 of this Order, that both relate to activities which are concerned with total requirements of the route without reference to the sales to individual stores. It is the practice of the wholesale routeman serving independent store customers to anticipate the total requirements of all his customers in preparing the route order covering the entire route for the next day. It is also the practice of the wholesale routeman to anticipate the requirements of each individual store customer and, at the time of delivery, to leave quantities which, in

the routeman's opinion, are sufficient to supply the daily sales needs of the customer. Mr. Malone states that there may be some minor exceptions to this practice but that this practice prevails in at least 95% of such locations served. There are no pre-orders by store customers.

197. Haskins & Sells prepared from the report forms (Exhibits II and III) a card for each customer served by the 134 routes, which showed the following information:

- a. Type of customer (cha<sup>l</sup>a, independent, or other wholesale)
- b. Dollars and points delivered
- c. Total minutes spent in serving the customer
- d. Number of deliveries ("stops") received by customer during the week the route was surveyed
- e. Route number
- f. Customer number (if a store customer)

198. These cards were first checked by Haskins and Sells' employees by balancing the total minutes with respect to [fol. 824] each customer against the totals appearing on the report forms at Line 9 of Exhibit I.

199. Haskins & Sells then sorted the cards by customer type and further sorted (as to independent stores) by stores falling within the different brackets set forth in Borden's published discount schedule.

200. The number of customer locations within each customer classification, and the total number of deliveries ("stops") made to customers within each classification were then computed from these cards and compared to the punched card tabulations for reconciliation purposes. The data on these cards and on the punched card tabulation was subsequently used in making all cost allocations on either a location or stop basis.

201. The cards so prepared by Haskins & Sells constitute Borden Bulk Exhibit 7.

202. The results of the computations made from the cards as reconciled to the IBM tabulations as to number of locations and stops by classification of customers were as follows:



| Classification of Customer | Number of Locations | Number of Regular Stops |
|----------------------------|---------------------|-------------------------|
| Chain Stores               | 254                 | 2412                    |
| Independent Stores:        |                     |                         |
| 0% bracket                 | 392                 | 2138                    |
| 2% bracket                 | 573                 | 3596                    |
| 3% bracket                 | 277                 | 1951                    |
| 4% bracket                 | 80                  | 710                     |
| Total                      | 1322                | 8395                    |
| Non-Store customers        | 374                 | 2002                    |
| Totals                     | 1950                | 12809                   |

[fol. 825] 203. From the punched cards, the total minutes spent in activities designated as Items 6 through 23 (paragraph 185 of this Order) was ascertained for each classification of customer. The total cost of such time and the cost per classification of customers was then computed by multiplying the number of minutes by the cost per minute set forth in Schedule XXV.

204. From the punched cards, the total minutes spent by routemen in each of the activities designated as Items 1 through 5, and Items 24 through 40 (paragraph 185 of this Order) was ascertained. The cost of such time for each item was then computed by multiplying the number of minutes by the cost per minute set forth in Schedule XXV. The cost thus computed was then allocated to classifications of customers either on a location or on a stop basis by means of the total number of regular stops or locations per classification, computed as set forth in paragraph 202 of this Order.

205. Schedule XXVI, "Allocation of Labor Costs of Route Operation to Store Customers," sets forth part of the results of computations made as described in paragraphs 203-4 of this Order. Schedule XXVI shows:

- The item number assigned to each activity as set forth in paragraph 185 of this Order.
- The total minutes spent in each such activity as shown by the report forms (Exhibits I and II).
- The total cost of the time spent on each activity.
- The minutes spent on each activity specifically performed with respect to chain stores.



- [fol. 826] e. The cost of the time so spent with respect to chain stores.
- f. The minutes spent on each activity specifically performed with respect to independent stores.
- g. The cost of the time so spent with respect to independent stores.
- h. The costs allocated to chain stores on a location basis.
- i. The costs allocated to independent stores on a location basis.
- j. The costs allocated to chain stores on a stop basis.
- k. The costs allocated to independent stores on a stop basis. Schedule XXVI does not set forth the costs allocated to non-store customers.



[fol. 827]

## SCHEDULE XXVI

THE ROBERT COMPANY - CHICAGO MILK DIVISION  
 ALLOCATION OF LABOR COSTS OF ROUTE OPERATION TO STORE CUSTOMERS  
 JULY AND AUGUST 1955

| (a)<br>Item<br>No. | (b)<br>Total<br>Minutes | (c)<br>Total<br>Cost | (d)<br>Chain Stores |            | (f)<br>Independents |            | (h)<br>Location Basis |              | (j)<br>Stop Basis |              |
|--------------------|-------------------------|----------------------|---------------------|------------|---------------------|------------|-----------------------|--------------|-------------------|--------------|
|                    |                         |                      | Minutes             | Cost       | Minutes             | Cost       | Chains                | Independents | Chains            | Independents |
| 1                  | 1,932                   | 140.91               |                     |            |                     |            | 17.52                 | 121.63       |                   |              |
| 2                  | 5,601                   | 440.81               |                     |            |                     |            | 97.62                 | 208.85       |                   |              |
| 3                  | 1,357                   | 117.29               |                     |            |                     |            | 13.71                 | 71.38        |                   |              |
| 4                  | 2,978                   | 231.07               |                     |            |                     |            | 30.10                 | 156.65       |                   |              |
| 5                  | 1,008                   | 140.29               |                     |            |                     |            | 18.27                 | 95.11        |                   |              |
| 6                  | 7,891                   | 612.29               | 5,170               | 401.16     | 2,512               | 194.92     |                       |              |                   |              |
| 7                  | 4,556                   | 3,503.85             | 12,356              | 1,315.51   | 23,600              | 1,311.23   |                       |              |                   |              |
| 8                  | 27,744                  | 2,152.78             | 11,733              | 95.38      | 12,709              | 95.15      |                       |              |                   |              |
| 9                  | 13,223                  | 1,026.03             | 6,222               | 520.35     | 5,873               | 455.71     |                       |              |                   |              |
| 10                 | 7,794                   | 604.77               | 2,942               | 305.98     | 3,336               | 258.85     |                       |              |                   |              |
| 11                 | 26,355                  | 2,045.00             | 3,367               | 261.26     | 20,952              | 1,624.30   |                       |              |                   |              |
| 12                 | 4,765                   | 369.74               | 2,452               | 190.26     | 2,304               | 162.68     |                       |              |                   |              |
| 13                 | 5,342                   | 414.51               | 2,555               | 198.25     | 2,784               | 194.62     |                       |              |                   |              |
| 14                 | 21,939                  | 1,702.14             | 5,739               | 445.31     | 14,494              | 1,104.65   |                       |              |                   |              |
| 15                 | 12,114                  | 939.98               |                     |            | 11,011              | 84.39      |                       |              |                   |              |
| 16                 | 939                     | 72.36                |                     |            | 878                 | 68.13      |                       |              |                   |              |
| 17                 | 6,447                   | 500.25               | 5,245               | 406.98     | 612                 | 47.33      |                       |              |                   |              |
| 18                 | 1,567                   | 121.59               | 873                 | 67.74      | 694                 | 48.65      |                       |              |                   |              |
| 19                 | 1,337                   | 103.74               | 763                 | 57.62      | 574                 | 41.98      |                       |              |                   |              |
| 20                 | 9,228                   | 716.04               | 4,985               | 386.81     | 3,443               | 266.77     |                       |              |                   |              |
| 21                 | 11,069                  | 858.89               | 6,100               | 473.33     | 4,976               | 381.80     |                       |              |                   |              |
| 22                 | 11,784                  | 914.37               | 3,110               | 243.57     | 7,440               | 577.32     |                       |              |                   |              |
| 23                 | 2,901                   | 225.10               | 431                 | 37.32      | 2,069               | 160.64     |                       |              |                   |              |
| 24                 | 5,181                   | 402.02               |                     |            |                     |            |                       |              |                   |              |
| 25                 | 36,798                  | 2,855.32             |                     |            |                     |            | 371.92                | 1,035.76     | 75.70             | 263.48       |
| 26                 | 50,933                  | 3,952.11             |                     |            |                     |            |                       |              | 241.20            | 2,390.20     |
| 27                 | 4,698                   | 364.54               |                     |            |                     |            | 47.48                 | 247.14       |                   |              |
| 28                 | 5,768                   | 447.56               |                     |            |                     |            | 59.30                 | 331.42       |                   |              |
| 29                 | 1,558                   | 121.80               |                     |            |                     |            | 15.75                 | 81.96        |                   |              |
| 30                 | 1,123                   | 87.14                |                     |            |                     |            | 11.15                 | 49.08        |                   |              |
| 31                 | 1,282                   | 99.48                |                     |            |                     |            |                       |              | 18.73             | 45.20        |
| 32                 | 3,605                   | 279.73               |                     |            |                     |            | 36.44                 | 189.44       |                   |              |
| 33                 | 6,277                   | 487.06               |                     |            |                     |            | 61.44                 | 331.20       |                   |              |
| 34                 | 6,036                   | 468.36               |                     |            |                     |            | 61.01                 | 317.52       |                   |              |
| 35                 | 4,000                   | 310.38               |                     |            |                     |            | 40.43                 | 210.42       |                   |              |
| 36                 | 300                     | 23.28                |                     |            |                     |            |                       |              | 4.18              | 15.76        |
| 37                 | 15,620                  | 1,212.02             |                     |            |                     |            |                       |              | 228.21            | 794.16       |
| 38                 | 2,107                   | 163.49               |                     |            |                     |            | 163.49                |              |                   |              |
| 39                 | 59                      | 4.56                 |                     |            |                     |            | 4.56                  |              |                   |              |
| 40                 | 168                     | 13.24                |                     |            |                     |            |                       | 13.24        |                   |              |
| Total              | 176,864                 | \$29,242.50          | 81,004              | \$6,255.45 | 119,759             | \$9,251.82 | 11,011.21             | \$4,421.80   | \$1,071.24        | \$3,728.50   |

[fol. 828] 206. Schedule XXVII, "Allocation of Labor Costs of Route Operations to Classes of Independent Stores on a Time Basis," sets forth additional results of computations made as described in paragraphs 202-4 of this Order. Schedule XXVII shows:

- a. The item number assigned to each activity as set forth in paragraph 185 of this Order.
- b. The total minutes spent in each activity specifically performed with respect to independent stores, as shown on Schedule XXVI.
- c. The total cost of the time so spent with respect to independent stores, as shown on Schedule XXVI.
- d. The total minutes spent on each activity specifically performed with respect to stores not entitled to any discount under Borden's discount schedule then in effect.
- e. The total cost of each activity listed in d.
- f. The total minutes spent on each activity specifically performed with respect to stores entitled to a 2% discount.
- g. The total cost of each activity listed in f.
- h. The total minutes spent on each activity specifically performed with respect to stores entitled to a 3% discount.
- i. The total cost of each activity listed in h.
- j. The total minutes spent on each activity specifically performed with respect to stores entitled to a 4% discount.
- k. The total cost of each activity listed in j.

[fol. 828a]

SCHEDULE XXVII

ALLOCATION OF LABOR COSTS TO CLASSES OF  
INDEPENDENT STORES ON A FIVE BASIS

| (a)<br>Item No. | (b)<br>Total<br>Minutes | (c)<br>Total<br>Cost | (1)<br>10 Bracket |          | (2)<br>15 Bracket |          | (3)<br>20 Bracket |          | (4)<br>25 Bracket |          | (5)<br>30 Bracket |      |
|-----------------|-------------------------|----------------------|-------------------|----------|-------------------|----------|-------------------|----------|-------------------|----------|-------------------|------|
|                 |                         |                      | Minutes           | Cost     | Minutes           | Cost     | Minutes           | Cost     | Minutes           | Cost     | Minutes           | Cost |
| 60              | 2,512                   | 194.92               | 168               | 13.24    | 946               | 77.26    | 486               | 53.23    | 662               | 51.37    |                   |      |
| 7               | 23,600                  | 1,831.23             | 3,273             | 253.47   | 4,700             | 352.46   | 5,992             | 542.54   | 3,635             | 282.66   |                   |      |
| 8               | 12,709                  | 986.15               | 2,232             | 173.11   | 4,418             | 346.09   | 3,719             | 280.57   | 2,041             | 158.38   |                   |      |
| 9               | 5,373                   | 455.71               | 148               | 11.48    | 1,457             | 109.35   | 2,497             | 209.27   | 1,361             | 105.41   |                   |      |
| 10              | 3,136                   | 255.75               | 199               | 15.44    | 799               | 77.52    | 1,385             | 107.47   | 753               | 58.42    |                   |      |
| 11              | 20,959                  | 1,626.30             | 1,626             | 126.17   | 7,112             | 551.65   | 7,355             | 570.71   | 4,866             | 377.57   |                   |      |
| 12              | 2,094                   | 162.45               | 236               | 18.31    | 342               | 25.33    | 55                | 50.82    | 361               | 28.02    |                   |      |
| 13              | 2,534                   | 196.62               | 145               | 11.25    | 65                | 47.12    | 245               | 24.88    | 559               | 43.37    |                   |      |
| 14              | 14,494                  | 1,124.65             | 2,218             | 172.18   | 6,222             | 482.79   | 4,066             | 315.50   | 1,988             | 154.24   |                   |      |
| 15              | 11,011                  | 84.39                | 2,000             | 17.14    | 4,334             | 375.48   | 2,809             | 217.65   | 1,367             | 106.07   |                   |      |
| 16              | 878                     | 67.43                | 147               | 11.47    | 336               | 24.07    | 299               | 23.20    | 95                | 7.36     |                   |      |
| 17              | 610                     | 47.33                | 64                | 4.75     | 173               | 13.42    | 187               | 14.51    | 194               | 15.07    |                   |      |
| 18              | 607                     | 43.65                | 78                | 6.05     | 300               | 23.28    | 184               | 14.28    | 65                | 5.04     |                   |      |
| 19              | 541                     | 41.98                | 49                | 3.80     | 232               | 18.00    | 187               | 14.51    | 73                | 5.66     |                   |      |
| 20              | 1,438                   | 111.77               | 148               | 11.48    | 1,006             | 78.06    | 1,265             | 98.46    | 1,019             | 79.07    |                   |      |
| 21              | 4,276                   | 331.80               | 193               | 14.98    | 1,246             | 98.23    | 1,748             | 135.64   | 1,069             | 82.99    |                   |      |
| 22              | 7,698                   | 597.32               | 1,334             | 101.51   | 3,548             | 276.86   | 1,953             | 151.54   | 843               | 65.44    |                   |      |
| 23              | 3,069                   | 160.54               | 434               | 32.65    | 750               | 58.20    | 605               | 46.94    | 280               | 21.77    |                   |      |
| Total           | 119,259                 | 9,253.82             | 14,684            | 1,137.39 | 45,591            | 3,537.59 | 37,753            | 2,927.42 | 21,231            | 1,647.44 |                   |      |

[fol. 829] 207. Schedule XXVIII, "Allocation of Labor Costs of Route Operations to Classes of Independent Stores on a Location or Stop Basis," sets forth additional results of computations made as described in paragraphs 202-4 of this Order. Schedule XXVIII shows:

- a. The item number assigned to each activity as set forth in paragraph 185 of this Order. The letter "L" or "S" following the item number indicates whether the allocation was made on a "location" or "stop" basis.
- b. Total cost of each activity allocated to independent stores on a location or stop basis, as shown in Schedule XXVI.
- c. Costs of each activity allocated to independent stores not entitled to a discount under Borden's discount schedule then in effect.
- d. Costs of each activity allocated to independent stores entitled to a 2% discount.
- e. Costs of each activity allocated to independent stores entitled to a 3% discount.
- f. Costs of each activity allocated to independent stores entitled to a 4% discount.

[fol. 830]

## SCHEDULE XXVIII

Allocation of Labor Costs to Classes of Independent Stores  
on a Location or Stop Basis

| a<br>Item<br>No. | b<br>Total<br>Cost | d<br>Allocation of Cost to Locations |               |                    |                    |
|------------------|--------------------|--------------------------------------|---------------|--------------------|--------------------|
|                  |                    | c<br>0%<br>Bracket                   | 2%<br>Bracket | e<br>3%<br>Bracket | f<br>4%<br>Bracket |
| 1 L.....         | \$ 101.63          | \$ 30.14                             | \$ 44.05      | \$ 21.29           | \$ 6.15            |
| 2 L.....         | 298.55             | 88.62                                | 129.53        | 62.62              | 18.08              |
| 3 L.....         | 71.38              | 21.17                                | 30.94         | 14.96              | 4.31               |
| 4 L.....         | 156.65             | 46.45                                | 67.90         | 32.82              | 9.48               |
| 5 L.....         | 95.11              | 28.20                                | 41.22         | 19.93              | 5.76               |
| 24 S.....        | 263.48             | 67.10                                | 112.86        | 61.23              | 22.29              |
| 25 L.....        | 1,935.76           | 573.99                               | 839.02        | 405.60             | 117.15             |
| 26 S.....        | 2,590.20           | 659.66                               | 1,109.51      | 601.96             | 219.07             |
| 27 L.....        | 247.14             | 73.28                                | 107.12        | 51.78              | 14.96              |
| 28 L.....        | 303.42             | 89.97                                | 131.51        | 63.58              | 18.36              |
| 29 L.....        | 81.96              | 24.30                                | 35.52         | 17.17              | 4.97               |
| 30 L.....        | 59.08              | 17.52                                | 25.61         | 12.38              | 3.57               |
| 31 S.....        | 65.20              | 16.60                                | 27.93         | 15.15              | 5.52               |
| 32 L.....        | 189.64             | 56.23                                | 82.20         | 39.74              | 11.47              |
| 33 L.....        | 330.20             | 97.91                                | 143.12        | 69.19              | 19.98              |
| 34 L.....        | 317.52             | 94.15                                | 137.62        | 66.53              | 19.22              |
| 35 L.....        | 210.42             | 62.39                                | 91.20         | 44.09              | 12.74              |
| 36 S.....        | 15.26              | 3.89                                 | 6.54          | 3.55               | 1.28               |
| 37 S.....        | 794.36             | 202.30                               | 340.26        | 181.61             | 67.19              |
| 40 L.....        | 13.04              | 3.87                                 | 5.65          | 2.73               | .79                |
| Total            | \$8,140.30         | \$2,257.74                           | \$3,509.31    | \$1,790.91         | \$ 582.34          |
| Sub-Totals       |                    |                                      |               |                    |                    |
| L.....           | 4,411.80           | 1,308.19                             | 1,912.21      | 924.41             | 266.99             |
| S.....           | 3,728.50           | 949.55                               | 1,597.10      | 866.50             | 315.35             |

[fol. 831] 208. The total labor costs allocated to classes of independent stores both on a time basis and on a cost basis were then computed by adding the totals appearing on Schedules XXVII and XXVIII, and were as follows:

| Store Classification             | Total Allocated<br>Labor Costs |
|----------------------------------|--------------------------------|
| Stores entitled to no discount   | \$3,397.13                     |
| Stores entitled to a 2% discount | 7,046.90                       |
| Stores entitled to a 3% discount | 4,720.33                       |
| Stores entitled to a 4% discount | 2,229.76                       |

209. Schedule XXIX, "Allocation of Labor Costs of Route Operations to Non-Store Customers," sets forth the remaining results of computations made as described in paragraphs 202-4 of this Order. Schedule XXIX shows:

- a. The item number assigned to each activity as set forth in paragraph 185 of this Order.
- b. The minutes spent on each activity specifically performed with respect to non-store customers.
- c. The cost of the time so spent with respect to non-store customers.
- d. The costs allocated to non-store customers on a location or stop basis.

[fol. 832]

## SCHEDULE XXIX

Allocation of Labor Costs of Route Operations to Non-Store Customers

| (a)<br>Item No. | (b)<br>Minutes<br>Spent | (c)<br>Cost of Time<br>Spent<br>\$ | (d)<br>Costs Allocated<br>On Location or<br>Stop Basis<br>\$ |
|-----------------|-------------------------|------------------------------------|--|
| 1.....          |                         |                                    | 28.76  |
| 2.....          |                         |                                    | 84.54  |
| 3.....          |                         |                                    | 20.20  |
| 4.....          |                         |                                    | 44.32  |
| 5.....          |                         |                                    | 26.91  |
| 6.....          | 209                     | 16.21                              |  |
| 7.....          | 3,700                   | 287.09                             |  |
| 8.....          | 3,497                   | 271.35                             |  |
| 9.....          | 528                     | 40.97                              |  |
| 10.....         | 516                     | 40.04                              |  |
| 11.....         | 2,029                   | 157.44                             |  |
| 12.....         | 219                     | 17.00                              |  |
| 13.....         | 253                     | 19.64                              |  |
| 14.....         | 1,706                   | 132.38                             |  |
| 15.....         | 1,103                   | 85.59                              |  |
| 16.....         | 61                      | 1.73                               |  |
| 17.....         | 592                     | 45.91                              |  |
| 18.....         | 67                      | 5.20                               |  |
| 19.....         | 56                      | 4.34                               |  |
| 20.....         | 805                     | 62.46                              |  |
| 21.....         | 693                     | 53.76                              |  |
| 22.....         | 947                     | 73.48                              |  |
| 23.....         | 351                     | 27.24                              |  |
| 24.....         |                         |                                    | 62.84  |
| 25.....         |                         |                                    | 547.64   |
| 26.....         |                         |                                    | 617.71   |
| 27.....         |                         |                                    | 69.92  |
| 28.....         |                         |                                    | 85.84  |
| 29.....         |                         |                                    | 23.18  |
| 30.....         |                         |                                    | 16.71  |
| 31.....         |                         |                                    | 15.55  |
| 32.....         |                         |                                    | 53.65  |
| 33.....         |                         |                                    | 93.42  |
| 34.....         |                         |                                    | 89.83  |
| 35.....         |                         |                                    | 59.53  |
| 36.....         |                         |                                    | 3.64   |
| 37.....         |                         |                                    | 189.43   |
| Total.....      | 17,332                  | \$1,344.86                         | \$2,133.62   |



[fol. 833] 210. The equivalent of seven employees were engaged at the two branches to make special deliveries. Such employees are paid for an eight-hour day. Overtime is paid when a sixth day is worked. Clocked hours are shown on the payroll records. The special delivery drivers at the Englewood branch worked six days a week; the drivers at the Irving Park branch worked five days a week.

211. During each of the five weeks of the time study, the special delivery drivers were furnished with report forms (Exhibits I, II, and III). The drivers recorded the time spent on these various activities on the appropriate report forms (Exhibits I and II) and recorded each delivery made to a customer on the appropriate report form (Exhibit III), except that Haskins & Sells inserted the elapsed time for each special delivery driver at the appropriate line of the report forms (Exhibit I). The time so inserted was that shown by the Borden payroll records. The difference between the time reported for specific activities and the elapsed time was computed and entered on line 27 of Exhibit I ("unaccounted for Time").

212. Haskins & Sells footed the daily sheets by customers, established and recorded on the report forms the classification of customers as between chain stores, independent stores, and non-store customers, established the discount bracket for each independent store customer, and recapped both the time specifically accounted for and the balance of the elapsed time.

213. The report forms so prepared constitute Borden Bulk Exhibit 8.

[fol. 834] 214. The report forms (Exhibits I, II, and III) prepared by the special delivery drivers, as set forth in paragraph 211 of this Order and constituting Borden Bulk Exhibit 8, were manually recapped by Haskins & Sells for the entire five weeks of the survey. All data shown on the forms was tabulated in detail except the data on Exhibit III of which only lines 142 and 143 and the package points were tabulated. The deliveries to customers were grouped by type of location and by the discount bracket in which the independent stores fell based on regular deliveries. The five-week totals for each category of store were divided by five to compute an average week's activity.

215. Haskins & Sells ascertained from Borden payroll

records the total compensation paid the special delivery drivers for the five weeks of the cost study. This was divided by five to produce a weekly average wage cost.

216. The vacation period applicable to the special delivery drivers was ascertained by Haskins & Sells from Borden payroll records. The weekly base wage rate of each of the employees involved was also ascertained from these records. The annual vacation cost was then computed by multiplying the applicable weekly base wage by the number of weeks' vacation to which the employee was entitled. The costs of vacation per employee thus computed were added to obtain a total annual cost. The total was divided by 52 to produce a weekly average cost, which is shown on line 2 of Schedule XXX.

217. The weekly cost of contributions to union severance, pension, and health and welfare funds was computed as \$5.50 per week for each of the special delivery drivers. [fol. 835] Each of the special delivery drivers was receiving more than \$4,200 a year in compensation. Weekly social security costs were computed as \$1.90 per man per week.

218. Schedule XXX, "Weekly Labor Cost of Special Deliveries," records the results of computations described in paragraphs 215-7 of this Order. Schedule XXX shows:

- Line 1* Weekly average wage cost
- Line 2* Weekly average vacation costs
- Line 3* Weekly average costs of contributions to union severance, pension, and health and welfare funds
- Line 4* Weekly average social security costs
- Line 5* Total average weekly costs

[fol. 836]

### SCHEDULE XXX

#### Weekly Labor Cost of Special Deliveries

|  |                 |
|--|-----------------|
| 1. Average weekly wages                | \$756 62        |
| 2. Average weekly vacation costs       | 24 82           |
| 3. Weekly contributions to union funds | 38 72           |
| 4. Weekly social security costs        | 13 18           |
| 5. Total weekly cost                   | <u>\$833 34</u> |

[fol. 837] 219. The total hours worked by special delivery drivers during the five weeks of the survey, as shown by the payroll records, was 1,504 hours. This number of hours was then multiplied by 60 to obtain the total minutes worked, and this result was divided by five to determine the average minutes per week—18,048 minutes. The cost per minute (\$.046174) was ascertained by dividing the total weekly cost as shown by Schedule XXX (\$833.34) by the average minutes worked per week (18,048).

220. By manual computations from the report forms (Exhibit II) filled out by the special delivery drivers, the total number of minutes spent on activities related to store customer deliveries as shown on such report forms was ascertained as 37,280 minutes, which, divided by five, amounted to a weekly average of 7,456 minutes. The cost of the time applicable to store customer deliveries (\$344.28) was then determined by multiplying the minutes devoted thereto (7,456) by the cost per minute previously ascertained (\$.046174).

221. In all cases where the time spent in an activity was specifically related to a particular customer, the cost of the activity was allocated on a time basis. In all other instances, the cost of the activity was allocated on a stop basis.

222. Haskins & Sells computed from the report forms (Exhibit II) the number of special deliveries ("stops") made to each classification of customer during the five weeks' period, and also the number of deliveries made to each classification of independent stores.

223. The number of special delivery stops by classification of customers was as follows:

|                               |    |     |
|-------------------------------|----|-----|
| [fol. 838] Chain stores       | 99 |     |
| Independent stores:           |    |     |
| 0% bracket                    | 5  |     |
| 2% bracket                    | 14 |     |
| 3% bracket                    | 22 |     |
| 4% bracket                    | 27 |     |
|                               | —  |     |
| Total                         |    | 68  |
| Non-store wholesale customers |    | 28  |
|                               |    | —   |
| Total                         |    | 195 |

224. Schedule XXXI, "Allocation of Costs of Special Deliveries," shows the results of the computations made as described in paragraphs 219-23 of this Order. Schedule XXXI shows:

- a. Classification of customers.
- b. Costs allocated to different classifications of customers on a time basis.
- c. Costs allocated to different classifications of customers on a stop basis.
- d. Total costs allocated to each classification of customer.

[fol. 829]

### SCHEDULE XXXI

#### Allocation of Costs of Special Deliveries

| a   | b                               | c                               | d                        |
|---|---------------------------------|---------------------------------|--------------------------|
| Customer Classification                         | Costs Allocated on a Time Basis | Costs Allocated on a Stop Basis | Total of Allocated Basis |
| Chain stores                                    | \$36 66                         | \$137 94                        | \$174 60                 |
| Independent stores:                             |                                 |                                 |                          |
| 0% bracket                                      | 1 29                            | 6 97                            | 8 26                     |
| 2% bracket                                      | 3 28                            | 19 51                           | 22 79                    |
| 3% bracket                                      | 4 53                            | 30 65                           | 35 18                    |
| 4% bracket                                      | 9 10                            | 37 61                           | 46 71                    |
| Total independent stores                        | \$18 20                         | \$ 94 74                        | \$112 94                 |
| Non-store Wholesale Customers - Other locations | \$17 73                         | \$ 39 01                        | \$ 56 74                 |
| Total   | \$72 59                         | \$271 69                        | \$344 28                 |

[fol. 840] 225. The trucks used by Borden making wholesale deliveries out of the Englewood and Irving Park branches are all substantially of the same capacity.

226MD. Borden owns the trucks used on the routes studied with the exception that in recent years Borden has entered into lease arrangements with truck leasing firms for some of the trucks used. Freight costs incurred in bringing leased vehicles from their source to the place in the Chicago area where they are used has been treated on Borden's books as a recurring expense rather than a capital charge. The freight costs on leased equipment were excluded from the computations made in the study because, in Mr. Malone's opinion, it was not a normal cost for the

period covered by the survey, being the result of a new venture as to which the company had not had sufficient experience to determine what was a normal rate of expense.

227MD. With respect to owned trucks depreciation is computed annually on a straight line basis, which recognizes the estimated life expectancy of each vehicle. This estimated life expectancy is revised annually based on the condition of the vehicle, use to which put, area traveled and any other factor which contributes to wear and tear. Trucks are constantly subject to change in location, area traveled and mileage in the normal course of operation.

228. Borden accounting records show that all charges to sub-accounts numbered 721 or 723-71-2, exclusive of charges to accounts 721 or 723-71-2-251 (Freight on leased equipment), for the twelve months ended July 31, 1955, totaled \$390,461.95. "Freight on leased equipment" covers freight [fol. 841] costs in the shipping of the leased trucks to Borden prior to their use by Borden, and amounted to \$17,520.17 in the twelve months period. This total of \$390,461.95 was then divided by 52 to produce an average weekly cost of \$7,508.89. This average weekly cost was allocated to various classifications of customers on a stop basis.

229. The total number of stops by classification of customers computed as described in paragraph 202 of this Order, was added to the weekly average number of special delivery stops by classification of customers computed as described in paragraphs 219-23 of this Order. The total number of stops for each classification of customer thus computed was as follows:

|                     |             |
|---------------------|-------------|
| Chain stores        | 2,511       |
| Independent stores: |             |
| 0% bracket          | 2,143       |
| 2% bracket          | 3,610       |
| 3% bracket          | 1,973       |
| 4% bracket          | 737         |
|                     | <hr/>       |
| Total               | 8,463       |
| Non-store customers | 2,030       |
|                     | <hr/>       |
| Total all stops     | 13,004      |
|                     | <hr/> <hr/> |

230. The average weekly whole-sale truck costs computed as above, was then allocated to classifications of customers in the ratio established by the stops as set forth above. Schedule XXXII, "Allocation of Wholesale Truck Costs," shows the results of these computations.

[fol. 842]

## SCHEDULE XXXII

## Allocation of Wholesale Truck Costs

|                             |            |            |
|-----------------------------|------------|------------|
| Chain Stores                |            | \$1,419.93 |
| Independent Stores:         |            |            |
| 0% bracket                  | \$1,237.43 |            |
| 2% bracket                  | 2,081.52   |            |
| 3% bracket                  | 1,139.27   |            |
| 4% bracket                  | 425.56     |            |
|                             |            | 1,886.78   |
| Non Store Customers         |            | 1,172.48   |
| Total Wholesale Truck Costs |            | \$7,508.89 |

[fol. 843] 231. A time study of the activities of the 42 clerical employees at the Englewood and Irving Park branches was made during the five weeks of the cost study. A form "Branch Office Time Analysis" was provided for that purpose. Exhibit V is a copy of this form. Daily during the five weeks of the cost study each clerical employee informed his supervisor as to how his time was spent which information was recorded by the supervisor on the report form (Exhibit V). The report forms (Exhibit V) prepared at the branches constitute Borden Bulk Exhibit 9.



[fol. 845] 232. The branch accounting clerks at the two branches designated on the completed employee report forms (Exhibit V) the type of business (retail, wholesale, etc.) to which the activity reported by the employee pertained.

233. Haskins & Sells then computed from the employee reports (Exhibit V) the weekly totals of time spent on each of the various wholesale activities thus reported, and also the five-week totals. The minutes spent on wholesale activities by the 42 clerical employees during the five-week period so computed totaled 259,747. This total was divided by five to produce an average weekly time spent of 51,950 minutes. This was equivalent to full time of 22 employees (40 hours times 60 minutes times 22 equals 52,800).

234. Haskins & Sells then ascertained from Borden payroll records the weekly rates of the 42 clerical employees, and computed the weekly cost of the time spent by such employees by applying the weekly rate to the total weekly time spent by each employee in wholesale activities as shown on Exhibit V and dividing the total by five to determine the average weekly clerical wage cost by function during the period of the survey. This computation produced a weekly wage cost of \$2,113.37.

235. Haskins & Sells next ascertained from Borden payroll records that 16 of the 42 employees were entitled to two weeks' vacation, 24 to three weeks' vacation, and two to no vacation. The total vacation cost of the 40 employees was then computed by multiplying the hourly rate of each employee by 40 times the number of weeks' vacation to which each employee was entitled. The total thus obtained [fol. 846] (\$10,012.14) was divided by 52 to produce a total weekly cost of \$192.54. Of this total, twenty-two forty-seconds (\$101.34) was treated as applicable to wholesale activities.

236. Weekly contributions to union funds were computed as \$4.50 times 22, or \$99.00. Weekly social security costs were computed as \$1.90 times 22, or \$41.80.



237. These weekly costs applicable to wholesale activities were then added to obtain a total:

|                                     |                   |
|-------------------------------------|-------------------|
| Weekly wage costs                   | \$2,113.37        |
| Weekly vacation costs               | 101.34            |
| Weekly contributions to union funds | 99.00             |
| Weekly social security costs        | 41.80             |
| <b>Total</b>                        | <b>\$2,355.51</b> |

238. The ratio of costs other than wages (\$242.14) to total wage costs (\$2,113.37) was then calculated. The result was 11.4575%. The wage cost by functions was increased the percentage in all subsequent computations of the total cost by functions.

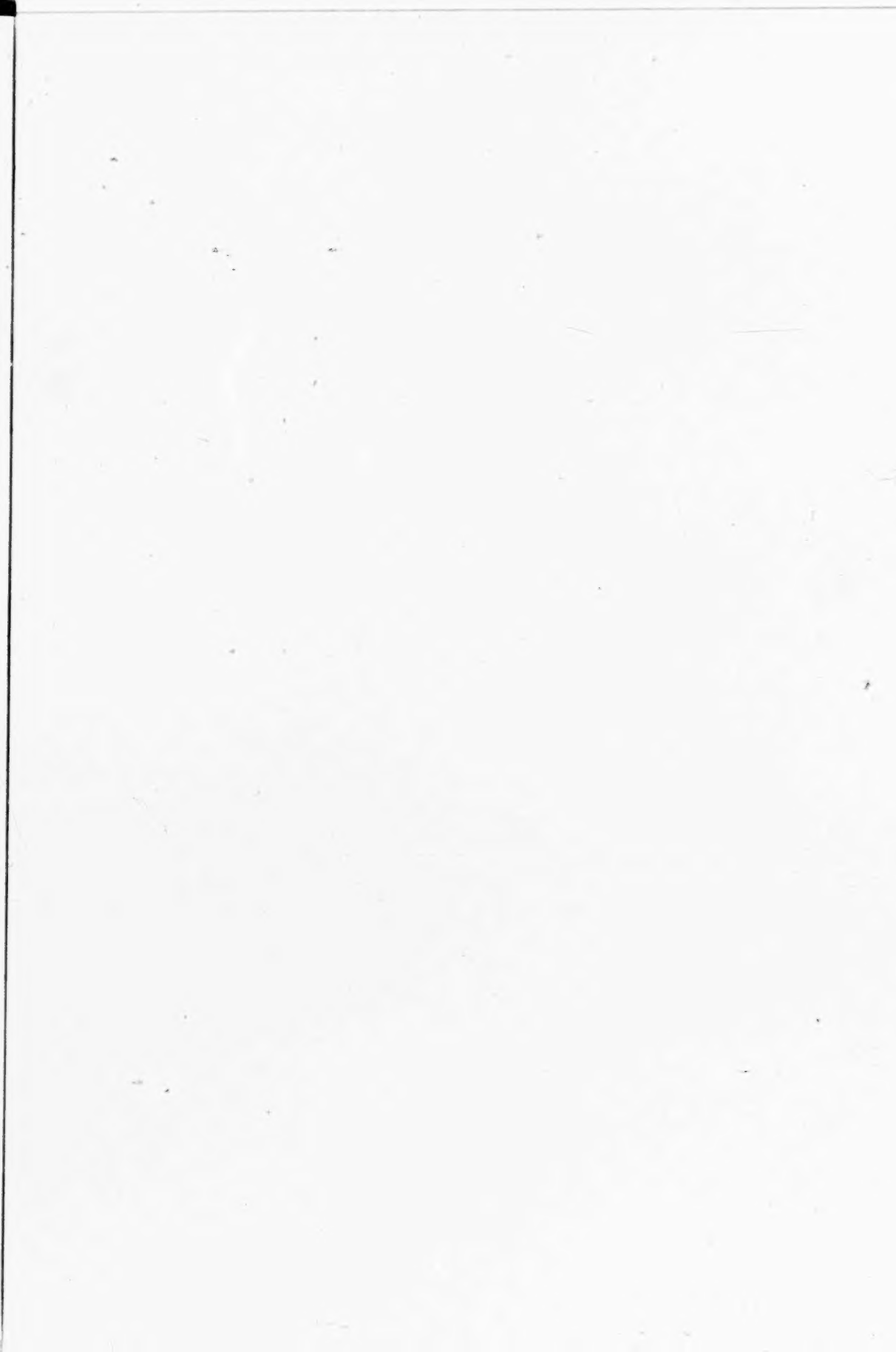
239. The weekly average minutes spent in checking and calculating chain store tickets were 6,800. The computed cost of this activity was \$290.75, all of which was allocated to chain stores.

240. The weekly average minutes spent in checking customer tickets other than chain store tickets were 624. The computed cost of this activity was \$31.91, which was allocated to independent stores and non-store customers on a location basis.

241. The weekly average cost of billing, \$61.37, and [fol. 847] credit and collection, \$64.73, a total of \$126.10, was charged directly to non-store customers.

242. The cost of all other activities reported was computed and allocated to all classifications of customers on a location basis.

243. Schedule XXXIII, "Allocation of Branch Office Clerical Costs," shows the results of these computations and allocations. The functions listed on Schedule XXXIII correspond in description and sequence to the function set forth on the report forms (Exhibit V).



## SCHEDULE XXXIII

[fol. 847a]

## ALLOCATION OF BRANCH OFFICE CLERICAL SALARIES

| Function<br>No. |   | Average<br>Minutes<br>Per<br>Week | Total<br>Cost Per<br>Week | Allocation of Cost |  |                 |                 |                 |                |                 |
|-----------------|---|-----------------------------------|---------------------------|--------------------|--|-----------------|-----------------|-----------------|----------------|-----------------|
|                 |   |                                   |                           | Chain<br>Stores    | Independent Stores By Discount Bracket |                 |                 |                 | Others         |                 |
|                 |   |                                   |                           |                    | Total                                  | 0%              | 2%              | 3%              |                | 4%              |
| 1               | Check and calculate chain store tickets                 | 6,800                             | \$ 200.75                 | 2290.75            | \$                                     |                 | \$              | \$              | \$             | \$              |
| 2               | Check customer tickets other than chain store           | 624                               | 31.91                     |                    | 24.87                                  | 7.37            | 10.78           | 5.21            | 1.51           | 7.04            |
| 3               | Cashier function  | 2,875                             | 142.74                    | 18.59              | 96.77                                  | 24.89           | 41.94           | 20.28           | 5.86           | 27.38           |
| 4               | Checking transfers                                      | 34                                | 1.75                      | .23                | 1.19                                   | .35             | .52             | .25             | .07            | .33             |
| 5               | Post sales to office ledger                             | 2,177                             | 95.20                     | 12.40              | 64.54                                  | 19.14           | 27.97           | 13.52           | 3.91           | 18.26           |
| 6               | Post, check, and summarize waste returns                | 2,531                             | 110.15                    | 14.35              | 74.68                                  | 22.14           | 32.37           | 15.65           | 4.52           | 21.12           |
| 7               | Post quantities returned overnight in vehicle stock box | 21                                | .91                       | .12                | .62                                    | .18             | .27             | .13             | .04            | .17             |
| 8               | Balance routemen's orders against sales                 | 3,092                             | 131.41                    | 17.12              | 89.09                                  | 26.42           | 38.61           | 18.67           | 5.39           | 25.20           |
| 9               | Distributing reduction in routemen's order              | 473                               | 20.73                     | 2.70               | 14.05                                  | 4.17            | 6.09            | 2.94            | .85            | 3.98            |
| 10              | Distributing addition to routemen's order               | 1,162                             | 51.89                     | 6.76               | 35.18                                  | 10.43           | 15.25           | 7.37            | 2.13           | 3.95            |
| 11              | Recapitulation of daily sales by products               | 3,598                             | 149.91                    | 19.53              | 101.63                                 | 30.14           | 44.05           | 21.29           | 6.15           | 28.75           |
| 12              | Prepare load schedules                                  | 2,325                             | 101.76                    | 13.25              | 68.99                                  | 20.46           | 29.90           | 14.46           | 4.17           | 19.52           |
| 13              | Billing time  | 1,425                             | 61.37                     |                    |  |                 |                 |                 |                | 61.37           |
| 14              | Payroll time  | 1,016                             | 48.56                     | 6.33               | 32.32                                  | 9.76            | 14.27           | 6.90            | 1.99           | 9.31            |
| 15              | P. M. Platform time                                     | 339                               | 14.90                     | 1.94               | 10.10                                  | 2.99            | 4.38            | 2.12            | .61            | 2.86            |
| 16              | Switchboard and typing                                  | 4,125                             | 177.89                    | 23.17              | 120.60                                 | 35.76           | 52.27           | 25.27           | 7.30           | 34.12           |
| 17              | Credit and collection                                   | 1,315                             | 64.73                     |                    |  |                 |                 |                 |                | 64.73           |
| 18              | Supervision   | 3,143                             | 161.94                    | 21.09              | 107.79                                 | 32.55           | 47.39           | 23.00           | 6.65           | 31.06           |
| 19              | Miscellaneous   | 14,872                            | 697.01                    | 90.79              | 472.54                                 | 140.13          | 204.81          | 99.01           | 28.59          | 133.68          |
|                 |   | <u>71,950</u>                     | <u>2,355.51</u>           | <u>5539.12</u>     | <u>21,317.56</u>                       | <u>\$300.68</u> | <u>\$571.07</u> | <u>\$276.07</u> | <u>\$79.74</u> | <u>\$498.83</u> |

Schedule XXXIII

[fol. 848] 244. At the division main office, the following specific functions are performed which relate directly to chain stores or independent stores, or both: (1) preparation and sending of weekly centralized billings to chain customers; (2) preparation and sending of monthly discount checks to independent stores; (3) preparation and sending of monthly or quarterly discount checks to chain customers; and (4) activities of the main office credit department relating to chain or independent stores. Studies of these costs were made, and allocations computed, as set forth in paragraphs 245-57 of this Order.

245. Exhibit VII is a copy of this report form used in recording the activities of employees of the division main office billing department during the five week period of the cost study. Daily reports were made by such employees to the department supervisor, and recorded by the supervisor on the report forms. The forms so prepared constitute Borden Bulk Exhibit 10.

## EXHIBIT VII

THE BORDEN COMPANY - CHICAGO MILK DIVISION

### MAIN OFFICE TIME ANALYSIS

FOR SURVEY DURING PERIOD JULY 11, 1955 TO AUGUST 13, 1955

Date \_\_\_\_\_

Department \_\_\_\_\_

Supervisor \_\_\_\_\_

[illegible]

NOTE: To be completed for each day during survey period.

[fol. 850] 246. The total minutes applicable to wholesale activities as shown by the report forms (Exhibit VII) were 80,070, which was divided by five to produce a weekly average time of 16,014 minutes. The hourly rate of each employee was then ascertained and applied to the average weekly number of minutes spent by that employee in wholesale activities. The sum of the costs per employee thus computed was \$524.66.

247. Of the average wholesale minutes, 12,121 at a cost of \$397.07 was applicable to chain stores, 1,834 at a cost of \$60.11 was applicable to independent stores, and the remainder, 2,059 minutes at a cost of \$67.48, was applicable to non-store customers. In the subsequent paragraphs and schedules of this Order, this cost has been allocated to the stores served by the 134 routes being studied on the basis of the number of each type of location to the total number of each type of location served by Borden's Chicago Milk Division.

248. During July, 1955 Borden's Chicago Milk Division served 29 chain locations and 424 independent locations not located in the Chicago area in addition to those included in the branches surveyed.

249. This computation resulted in an allocation of \$356.38 to chain stores, \$42.29 to independent stores, and \$67.48 to non-store customers. The costs to independent stores was then allocated to classifications of independent stores on a location basis.

250MD. It has been the general practice to bill chain store accounts once a week. The billing is made in a single total invoice to each of the two chain store customers.

[fol. 851] 251. The division main office Credit Department consists of a credit manager and assistants. The department maintains credit files on each independent store customer, secures credit ratings when required, collects delinquent accounts, and audits and controls balances on open accounts.

252. The report forms (Exhibit VII) were also used in recording the activities of employees of the Division Main Office credit department during the five week period of the cost study. Daily reports were made by such employees to the department supervisor, and recorded by

the supervisor in the report forms. The report forms so prepared constitute Borden Bulk Exhibit 11.

253. The total cost of the activities of the credit department was computed by reference to Borden payroll records for the employees involved for salaries and by adding the applicable social security costs for the five-week period of the cost study and dividing that cost, \$1,816.35, by the total minutes expended, 45,000, to calculate a cost per minute of \$.04036 applicable to all activities. The minutes spent on exclusively wholesale functions totaled 1,606 which multiplied by the cost per minute results in a cost of \$64.82.

254. This cost was allocated to classifications of customer locations on a time basis and to the stores served by the 134 routes being studied out of the Divisional Total on the same basis as that of the billing department. The weekly costs thus allocated to the stores studied was \$60.72, of which \$1.30 was allocated to chain stores, \$9.37 to independent stores, and \$50.05 to non-store customers. The costs to independent stores was then allocated to classifications of independent stores on a location basis.

255. The division main office accounting department supervises the preparation of sales data used in calculating discounts payable to store customers. The actual compilation of this data from company records, so far as it relates to independent stores, is done by employees of Robert F. White & Company, Clerical Service.

256. The report forms (Exhibit VII) were also used in recording the activities of Borden employees of the Division main office accounting department during the five week period of the cost study. Daily reports were made by such employees to the department supervisor, and recorded by him on the report forms. The report forms so prepared constitute Borden Bulk Exhibit 12.

257. The average weekly time spent on this activity (721 minutes), and the average weekly cost of this time (\$28.34) was computed in the same manner as in the case of the billing department. The proportion of this cost applicable to the store customers served by the 134 routes surveyed (\$21.72) was computed by taking the proportion which the total number of customers served by those routes to the total store customers in the Division as set forth under

the heading "Billing Department." On a time basis, \$8.25 of this cost was applicable to the chain stores and \$13.47 to the independent stores.

258. The cost of Robert F. White & Company, for this work during July, 1955 was ascertained from the invoice rendered by that organization. The average weekly cost applicable to Englewood and Irving Park (\$140.83) was then computed by taking 6/26 of the monthly cost. (July, [fol. 853] 1955, had 26 working days.) This amount was charged to the independent stores and added to the \$13.47 computed as described above, making a total of \$154.30 charged to the independent stores. This amount was allocated to classes of independent stores on a location basis.

259. Employees of Borden's district main office tabulating department prepare the discount checks for the Chicago Milk Division's independent store customers and perform statistical tabulations relating to all customers. Employees of the tabulating department were given report forms and instructed to complete them daily during the five weeks of the cost study. Exhibit VIII is a copy of the report form used in recording the activities of employees of this department during the five week survey period. Daily reports were made by such employees to the tabulating department supervisor, and recorded by him on the report forms. The report forms so prepared constitute Borden Bulk Exhibit 13.



THE BORDEN COMPANY - CHICAGO MILK DIVISION

TABULATING DEPARTMENT TIME ANALYSIS

Supervisor \_\_\_\_\_

FOR SURVEY DURING PERIOD JULY 11, 1955 TO AUGUST 13, 1955

Date \_\_\_\_\_

[illegible]

NOTE: To be prepared for each day during survey period.

158

[fol. 855] 260. The total minutes spent in each of the activities named in the report forms, the weekly average of the minutes spent in each activity, the cost per minute, and the average weekly costs were computed in the same manner as in the case of the division main office billing department (paragraphs 245-50 of this Order). The added cost of machine rentals was ascertained from accounting records showing rental charges and reduced to a weekly figure. The total weekly cost (\$57.20) was allocated to the activities reported on the forms (Exhibit VIII) in proportion to the time the machines were used in such activities, this time being reported on and computed from the report forms (Exhibit VIII).

261. The total weekly labor and machine costs allocated to chain stores was \$12.12, and to independent stores was \$45.08. The costs allocated to independent stores were in turn allocated only to the store classifications receiving discounts in proportion to the number of locations in each classification.

262. All bad debt losses of the Chicago Milk Division from store customers for the six years ended December 31, 1954 have occurred only in the case of independent stores and non-store customers and never in the case of chain store customers.

263. The average bad-debt charge-offs for the six years ended December 31, 1954 were \$1,642.25. This figure was divided by 52 to produce a weekly average cost of \$31.58, of which \$31.42 was applicable to independent stores and \$.16 to non-store customers. The cost to independent stores was allocated on a location basis, with the following result:

[fol. 856] Independent stores:

|                     |             |
|---------------------|-------------|
| 0% bracket          | \$ 9.32     |
| 2% bracket          | 13.62       |
| 3% bracket          | 6.58        |
| 4% bracket          | 1.90        |
|                     | <hr/>       |
| Total               | \$31.42     |
| Non-store customers | .16         |
|                     | <hr/>       |
| Total               | \$31.58     |
|                     | <hr/> <hr/> |

264. The total net charges to accounts 721 and 723-23-2-126 and 127 for the twelve months ended July 31, 1955 amounted to \$115,118.40. These charges represent the loss on fluid milk and milk products returned by store customers not sold by them. Such milk is used in the production of cheese and similar milk products, and cannot be resold as fluid milk or milk products. The total wholesale price of returned milk is charged to these accounts, and are credited with amounts resold or with the current market price for milk used in the production of cheese or other milk products.

265. The total of the net charges to these accounts (\$115,118.40) was divided by 52 to obtain a weekly average cost (\$2,213.82). This cost was then allocated to wholesale customers on a time basis in proportion to the time spent by routemen and relief drivers in gathering returned merchandise, as computed from the report forms (Exhibit II). The result of these computations was as follows:

|                             |                          |
|-----------------------------|--------------------------|
| [fol. 857] Chain stores     | \$1,139.20               |
| Independent stores:         |                          |
| 0% bracket                  | \$109.65                 |
| 2% bracket                  | 391.19                   |
| 3% bracket                  | 304.31                   |
| 4% bracket                  | 167.72                   |
|                             | <hr/>                    |
| Total to Independent stores | 972.87                   |
| Non-store customers         | 101.75                   |
|                             | <hr/>                    |
| Total                       | <u><u>\$2,213.82</u></u> |

266MD. The charges for loss on products returned, described in paragraphs 264-5 of this Order, have been allocated, for purposes of this study, on the basis of direct actual time spent at the stores in handling the merchandise returned, because, in Mr. Malone's opinion, there was a direct relation between the time so spent and the quantities of the returns. In Mr. Malone's opinion, allocation could also have been made on the basis of the quantities returned by each store had records been kept of such quantities. The

manner in which quantities to be left at individual stores is determined is described in paragraph 196MD of this Order.

267MD. Since the majority of the returns are of homogenized milk, and some milk in the Chicago area has to be resold within a brief period of time after pasteurization, the returned milk is not resold as fluid milk. Some such milk is sold for animal feed purposes.

268MD. The federal marketing order in the Chicago marketing area establishes class prices for all milk purchased, [fol. 858] which prices are based upon what utilization is made of the milk. Waste milk is usually utilized in ways which place it in the lowest priced class, unless there is excess waste which is placed in Class I.

269MD. The costs described in paragraphs 264-5 of this Order are the differences between what Borden has to pay for the milk which becomes waste, and what Borden receives for it when sold for uses other than human consumption, such as for animal feed.

270. The total points and total dollar sales of fluid milk and milk products to each class of wholesale customers on the 134 routes studied were computed for the week in which each route was studied. The totals so computed are set forth in Schedule XXXIV.

[fol. 859]

#### SCHEDULE XXXIV

##### Total Points and Total Dollar Sales by Classes of Wholesale Customers

|                           | Total<br>Points | Total Dollar<br>Sales |
|---------------------------|-----------------|-----------------------|
| Independent Stores:       |                 |                       |
| 0% bracket                | 30,773          | \$ 6,554 77           |
| 2% bracket                | 157,501         | 33,051 13             |
| 3% bracket                | 171,310         | 35,899 27             |
| 4% bracket                | 110,891         | 23,167 35             |
| Total Independent Stores  | 470,475         | 98,672 52             |
| Chain Stores              | 913,536         | 195,262 07            |
| Other Wholesale Customers | 86,315          | 18,579 38             |
| Grand Totals              | 1,470,326       | \$312,514 97          |

[fol. 860] 271. In the course of the study, employees of Haskins & Sells reviewed the classification of accounts and the methods employed by Borden for the charging of expense to the various classifications and accounts bearing the number 23 and 71, and tested the charges actually made to ascertain if they had been made in accordance with standing instructions.

272. The total charges made to accounts 721 and 723—23-2-8, 9, 10, 34, 47, 49, and 227 for the months of July and August, 1955 were ascertained from the books of account. These months contained 53 working days. An average weekly charge was computed by taking 6/53 of the total charges for the two months. The figures thus obtained were as follows:

|                    |   |           |
|--------------------|---|-----------|
| 721 and 723—23-2-8 | Salaries—senior route foremen....                             | \$ 984.80 |
| 9                  | Salaries—junior route foremen....                             | 2,805.84  |
| 10                 | Salaries—routemen.....  | 11,136.44 |
| 34                 | Salaries—extra compensation to<br>routemen.....               | 10,040.74 |
| 47                 | Salaries—additional vacation labor....                        | 1,620.35  |
| 49                 | Severance—retirement expense....                              | 2,108.36  |
| 227                | Insurance—unemployment compensation and federal insurance.... | 657.30    |

273. Haskins & Sells made sample tests and examinations of the accounts 721 and 723—23-2 and 721 and 723—71-2 and of the charges to these accounts for the month of July, 1955, and of the charges to each of these accounts for at [fol. 861] least one other month in the year 1955. Among the matters tested or questioned were:

- a. the basis of allocation of costs between types of operation (wholesale, retail, etc.)
- b. the type of expense charged to each specific account.

274. Beginning with the third week of the cost study, two employees of Haskins & Sells were assigned to the branches, one to Irving Park and one to Englewood. These two men:

- a. Prepared a weekly recap of routes surveyed.
- b. Established control figures for dollars and points for each route from the data recorded in Exhibit III.

- c. Verified elapsed time as shown on report forms (line 28, Exhibit I) by comparison with Borden payroll records.
- d. Checked and verified the posting of dollars and points from the sales tickets to the report forms (Exhibit III). Approximately 50% of these postings were checked.
- e. Checked the footings and cross-footings entered on the report forms (Exhibits I, II, and III) by the comptometer operators. Approximately 30% of these computations were checked.
- f. Checked the entries of quantities on the report forms (Exhibit III) against entries in the route books. [fol. 862] Approximately 25% of the entries were thus checked.
- g. Reviewed the forms (Exhibits I, II, III) for reasonableness and consistency.

275. Haskins & Sells checked the accuracy of the punched cards in the following manner:

- a. The punched cards were tabulated to obtain the totals, route by route, for each of the entries on the report forms (Exhibit II) except lines 35, 37, 39, 48, 65 and 66. The totals by routes so obtained were then compared with the totals obtained by tabulating the punched cards with respect to the entries on line 9 of the report forms (Exhibit I). Corrections called for as a result of this check were made either in the punching of the data from line 9. (Exhibit I) or in the punching of the data from the report forms (Exhibit II).
- b. The detail punching was checked line item by line item on the cards representing approximately 20 routes and the customers served by those routes.
- c. The total dollars and points tabulated from the punched cards were reconciled to the control figures previously established by Haskins & Sells as described in paragraph 274 of this Order and made necessary corrections.
- d. The cards as to individual customers prepared by Haskins & Sells as described in paragraphs 197-202 [fol. 863] of this Order (Borden Bulk Exhibit 7).

were balanced to the figures obtained by tabulations from the punched card entries representing line 9 of the report forms (Exhibit I) as to number of minutes. The cards were further balanced to the dollars and points by customers obtained by tabulating the punched card entries representing lines 142 and 143 of the report forms (Exhibit III).

- c. The totals obtained by tabulations from the punched cards as to dollars, points, minutes, locations, and stops were compared to the totals obtained from the cards as to individual stores prepared by Haskins & Sells (Borden Bulk Exhibit 7). Corrections were made wherever necessary in the punched cards.

276. The cards prepared by Haskins & Sells from the report forms (Exhibits II and III) as described in paragraphs 197-202 of this Order (Borden Bulk Exhibit 7) were further checked by Haskins & Sells in the following manner:

- a. The cards were checked against the accumulated sales tickets (Borden Bulk Exhibit 5) to establish what discount was earned by each independent store.
- b. The cards representing all independent stores with customer numbers appearing on the report forms were checked against the discount lists maintained [fol. 864] in Borden's divisional main office to check customer classifications, and corrections were made in the cards.

277. Haskins & Sells checked the report forms (Exhibits I, II and III) filled in by special delivery drivers as described in paragraphs 210-4 of this Order (Borden Bulk Exhibit 8). These report forms were manually tabulated by Haskins & Sells as described in paragraphs 197-202 of this Order.

278MD. In making the cost study described in paragraphs 82 through 279 of this Order, special expenses were incurred by Borden for the accounting and auditing services of Haskins & Sells, for tabulating services and various other office services and for the employment of time and motion men. For these specific charges and



other expenditures in connection with the cost survey, exclusive of attorneys' fees, Borden has expended the sum of \$45,896.61. This sum does not include the cost of the time of regular Borden employees which additional cost has been substantial. For example, Mr. Malone and his staff, as well as the regular Borden employees used as time study men (see paragraph 156 of this Order), devoted a great deal of time to making the cost study.

279. Exhibit IX is the letter of Haskins & Sells to Borden dated February 29, 1956.

[fol. 865]

**EXHIBIT IX**

Haskins & Sells Certified Public Accountants  
Board of Trade Building, Chicago 4

February 29, 1956.

The Borden Company,  
Chicago Milk Division,  
3638 North Broadway,  
Chicago 13, Illinois.

**DEAR SIRS:**

In accordance with the request of Mr. J. F. Malone, District Controller of Chicago-Central District of The Borden Company, we have participated in and reviewed the costs compiled in the survey of the costs of distribution to wholesale customers which was conducted during the five-week period ended August 13, 1955 at the Englewood and Irving Park branches of Chicago Milk Division of The Borden Company. To the extent we deemed appropriate in the circumstances, we reviewed the determination and accumulation of the time (minutes) expended on the various wholesale activities at the branches and the Division main office as more particularly set forth in this additional pre-trial order. We also assisted in compiling the costs relative to the distribution function as encompassed in the survey, which were taken from the records of the Company, and reviewed the compilation of costs so determined.

In our opinion, the presentation of the time (minutes) and cost relating to the distribution of milk and milk products at wholesale, presents fairly the total costs as set forth in



this additional pre-trial order involving the distribution of fluid milk at wholesale on the routes surveyed during the five-week period ended August 13, 1955 at the Englewood and Irving Park branches of Chicago Milk Division of The Borden Company.

Yours truly, /s/ Haskins & Sells.

[fol. 866] 280. As is set forth in paragraph 26 of this Order, Borden operates 28 bulk wholesale routes out of Chestnut Street. A cost survey of the bulk wholesale business comparable to that prepared with respect to the store wholesale business would have required a complete analysis of the cost of delivery on each of the 28 bulk wholesale routes. Such a survey, in Mr. Malone's opinion, could not have been made without incurring costs similar to those incurred in the making of the survey on store wholesale. In view of the fact that we are dealing with, at most, the costs of delivery to five bulk wholesale customers, the cost of making the survey would, in Mr. Malone's opinion, be disproportionate to the amount of the total sales involved.

281MD. In Mr. Malone's opinion, no assumption can be made, from the results of the store wholesale survey, that the cost of distribution in the bulk wholesale field would be much lower in the case of customers buying larger amounts per location. His opinion is based upon the different purchasing practices of different bulk wholesale customers, the dissimilarity of establishments (e.g., basement, ground floor, and upper floor locations, etc.) and the variety of customer facilities, elevators, refrigerators, receiving docks, etc.), all of which factors would tend to distort cost allocations.

## II. ADDITIONAL AGREEMENTS AS TO ISSUES

1. Plaintiff does not contend in this proceeding that differences between prices charged store wholesale customers and prices charged hotels, restaurants and other public eating places are evidences of a violation of Section 2(a) of [fol. 866a] the Clayton Act as amended.

2. Plaintiff does not contend in this proceeding that the added discounts of 1½% allowed by Borden in December, 1954 and in September, 1955 to store customers Schubert, Popik and Arthur Cartan, which discounts are referred to in paragraphs 3 and 13 and Schedule II of the Supple-

mental Pre-Trial Order entered in this action on November 8, 1955, are evidences of a violation of Section 2(a) of the Clayton Act as amended. Borden does not intend to offer evidence of any prices offered by Lake Valley Dairy to Schubert, Popik and Arthur Cartan.

Enter:

Campbell, Judge.

Dated: September 19, 1957.

[fol. 867]

EXHIBIT G

Borden's—Chicago Milk Division  
The Borden Company

3638 Broadway, Chicago 13, Ill.

June 2, 1954.

DEAR GROCER:

Effective June 2, 1954, our prices to you will be as follows:

|  |             |
|--|-------------|
| Gal. Homo V.D. Milk .....                                  | 64          |
| Qts. Homo V.D. Milk .....                                  | 175         |
| 1/2 Gals. Homo V.D. Milk .....                             | 34          |
| 1/2 Gals. Gail Borden Signature Quality Milk "Glass" ..... | 36          |
| 1/2 Gals. Zest Modified Skim Milk "Paper" .....            | 31          |
| Qts. Chocolate Drink .....                                 | 195         |
| 1/2 Pts. Chocolate Drink, Handi-Pak .....                  | 63 per doz. |
| Qts. Vitamin Fortified Skim Milk .....                     | 15          |
| Qts. Buttermilk .....                                      | 175         |
| Pts. Rich Cream .....                                      | 46          |
| 1/2 Pts. Rich Cream .....                                  | 235         |
| 12 Oz. Sour Cream .....                                    | 34          |
| 8 Oz. Sour Cream .....                                     | 225         |
| Pts. Half & Half .....                                     | 255         |
| 1/2 Pts. Whipping Cream .....                              | 315         |
| Borden's Triple Whip or Reddi-Wip—7 Oz. Can .....          | 43          |
| 8 Oz. Creamed Cottage Cheese (plain) .....                 | 125         |
| 12 Oz. Creamed Cottage Cheese (plain) .....                | 175         |
| 16 Oz. Creamed Cottage Cheese (plain) .....                | 205         |
| 8 Oz. Chive Creamed Cottage Cheese .....                   | 135         |
| 12 Oz. Chive Creamed Cottage Cheese .....                  | 185         |
| 16 Oz. Chive Creamed Cottage Cheese .....                  | 215         |
| 8 Oz. Pineapple Creamed Cottage Cheese .....               | 145         |
| 12 Oz. Pineapple Creamed Cottage Cheese .....              | 195         |
| 16 Oz. Pineapple Creamed Cottage Cheese .....              | 225         |
| Dry Curd Cheese (12 Oz.) .....                             | 185         |
| Yogurt (8 Oz.) .....                                       | 17          |

The bottle deposit plan which we announced on December 10 remains in effect. Your advertising allowance of  $\frac{1}{2}$  of 1% on purchases of fresh dairy products will also remain in effect as per our letters of June 30, 1949, June 11, 1951 and August 1, 1952.

Very truly yours, The Borden Company, Chicago  
Milk Division. S/H. R. Fagerson, Vice President.

HRF:SP

[fol. 868]

### EXHIBIT H

#### Dean's Discount Schedule Effective Tuesday, June 1, 1954

The following discount schedule will be applied to all purchases of Dean's fresh milk products.

| Average converted<br>units per day | % Discounts |
|------------------------------------|-------------|
| 0-24.....                          | 0           |
| 25-74.....                         | 2           |
| 75-149.....                        | 3           |
| 150 and over.....                  | 4           |

Discounts will be computed as follows:

1. Your total monthly purchases of Dean's fresh Milk products will be converted to units. This total will be divided by the number of days during the month that our trucks are on the street making normal store deliveries. This figure becomes your average converted units per day.
2. From your average converted units per day your discount can be found from the above discount schedule.
3. Your discount for the month will then be applied to your total dollar sales of Dean's fresh milk products.

|                             | units |                     | units |
|-----------------------------|-------|---------------------|-------|
| Gallons.....                | 4     | Buttermilk.....     | 1     |
| $\frac{1}{2}$ Gals.....     | 2     | Half and Half.....  | 1     |
| $\frac{1}{2}$ Gal. Vim..... | 2     | Whipping Cream..... | 1     |
| Ots.....                    | 1     | Sour Cream.....     | 1     |
| Skimmed Milk.....           | 1     | Cottage Cheese..... | 1     |
| Chocolate Drink.....        | 1     | Super Whip.....     | 1     |
|                             |       | Yogourt.....        | 1     |

Discount checks will be mailed to you during the month following the month in which they were earned.

This Discount Schedule Applies To Dean Owned Chicago Area Routes Only.

Dean Milk Company, Franklin Park, Illinois. Phones  
TUxedo 9-1800—GLadstone 5-1680.

[fol. 869]

### EXHIBIT J

Dean's  
Prices Effective Wednesday, June 2, 1954

| To<br>You        |  |       |
|------------------|--|-------|
| \$ 64            | Dean's Homogenized Milk—Gal.                 | ..... |
|                  | (Plus Bottle Deposit)                        | ..... |
| 34               | Dean's Homogenized Milk— $\frac{1}{2}$ -Gal. | ..... |
| 17 $\frac{1}{2}$ | Dean's Homogenized Milk—Qts.                 | ..... |
| 34               | Dean's Vim— $\frac{1}{2}$ -Gals.             | ..... |
| 15               | Dean's Skimmed Milk—Qts.                     | ..... |
| 19 $\frac{1}{2}$ | Dean's Chocolate Drink—Qts.                  | ..... |
| 17 $\frac{1}{2}$ | Dean's Buttermilk—Qts.                       | ..... |
| 25 $\frac{1}{2}$ | Dean's Half and Half—Pts.                    | ..... |
| 31 $\frac{1}{2}$ | Dean's Whipping Cream— $\frac{1}{2}$ Pts.    | ..... |
| 22 $\frac{1}{2}$ | Dean's Sour Cream—8 oz.                      | ..... |
|                  | Dean's Creamed Cottage Cheese                | ..... |
| 17 $\frac{1}{2}$ | 12-oz. Package                               | ..... |
| 95               | 5-lb. Carton                                 | ..... |
| 43               | Super-Whip—6 Oz. Can                         | ..... |
| 17               | Yogourt—8 oz. Carton                         | ..... |

Above Products carry our graduated discount schedule effective June 1, 1954.

Dean Milk Co., 3600 N. River Road, Franklin Park,  
Illinois. TUxedo 9-1800—GLadstone 5-1680.

[fol. 870]

**EXHIBIT K**

Dean Milk Company  
3600 River Road  
Franklin Park, Illinois

August 29, 1955.

DEAR DEAN CUSTOMER:

Effective today, we are discontinuing all store discounts and the 4¢ handling allowance on gallon jugs.

Yours very truly, Dean Milk Company, Sales Department.

[fol. 871]

**EXHIBIT L**

Dean Milk Company  
Price List  
Effective: 8/29/55

|                            |      |     |
|----------------------------|------|-----|
| Gals. Milk.....            | .69  | .15 |
| ½ Gals. Milk.....          | .35  |     |
| Qts. Milk.....             | .18  |     |
| ½ Gals. Vim.....           | 32-½ |     |
| Qts. Skim.....             | .17  |     |
| Qts. Chocolate.....        | .23  |     |
| Qts. Buttermilk.....       | .18  |     |
| Pts. Half & Half.....      | .27  |     |
| ½ Pts. Ready Shake.....    | .10  |     |
| ½ Pts. Whipping Cream..... | .29  |     |
| 8 oz. Sour Cream.....      | .25  |     |
| 8 oz. C. Cheese.....       | .16  |     |
| 1# C. Cheese.....          | .24  |     |
| 2# C. Cheese.....          | .42  |     |
| 6 oz. Super Whip.....      | .42  |     |
| 8 oz. Yogourt.....         | 18-½ |     |

These Prices Net

.04 handling charge on gallon jugs discontinued

[fol. 872]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF  
ILLINOIS, EASTERN DIVISION

No. 51 C 947

[Title omitted]

**Transcript of proceedings—December 23, 1957**

Transcript of proceedings had at the pre-trial conference in the above-entitled cause before Honorable William J. Campbell, one of the Judges of said Court, in his chambers, United States Courthouse, Chicago, Illinois, on Monday, December 23, 1957, at 2:00 o'clock, p.m.

PRESENT:

Mr. Earl Jinkinson, Mr. Bertram Long, and Mr. Elliott B. Wooley, on behalf of the Government;

Mr. Edward L. Hart, Jr. and Mr. John P. Stevens, on behalf of the defendants Bowman Dairy Company and Ridgeview Farms Dairy, Inc.;

Mr. H. Blair White, and Mr. Joseph Greaves, on behalf of defendants The Borden Company and Belmont Dairy Company.

[fol. 873] The Court: How are we getting along? Are we all set, fellows? What is the situation?

Mr. Jinkinson: We are all set except for three paragraphs of the proposed Bowman order.

The Court: Well, we will set time for the filing of briefs so that we get this out of the way.

What are the three paragraphs, the ones that we discussed in the last pre-trial where we were going to agree on putting in depositions I think pretty well?

Mr. Hart: We agreed on the three we were discussing. Those were the last ones.

Mr. Long: About meeting competition.

Mr. Hart: We redrafted those in a way that was agreeable.

These paragraphs that Mr. Jinkinson refers to now are paragraphs far prior to that that previously had been agreeable.

The Court: Oh! Now, who finds them disagreeable?

Mr. Jinkinson: The Government, your Honor, as usual.

The Court: What happened? Have we had another change of administration?

Let us see now, where is the original 28 that was agreed to, 28 here?

Mr. Long: 28.

The Court: Yes.

Mr. Hart: 28.

[fol. 874] Mr. Wooley: For your information, the word that we suggested to change was—

The Court: All right. I do not need to read that one.

Mr. Jinkinson: You don't. The first word, we just inserted the word "principal."

The Court: You object very much to that?

Mr. Hart: Well, I do, only as the sense of the thing comes out later on, of course, as you get onto the—

The Court: I think that is proper. It is an adjective and not a noun. I don't think your proposed additions are any more than argument; and even assuming now, taking the defendant's situation, even assuming that I permit them to be made, I don't think it weakens the effect of the stipulation by adding argument, because when I am considering the stipulated facts, I am going to consider them as fact and regard the argument more or less as part of the brief.

Mr. Wooley: You mean Paragraph 28 is argument?

The Court: No. I mean the additional material is argument. I think what you are doing is putting part of your argument in here in the stipulation. I address myself now to the Government.

[fol. 875] I think the entire addition here towards the bottom as to whether you accept the validity of the assumed mathematical relationship between driver time and volume for certain items of driver's service becomes pretty largely a matter of argument when you stipulate as to the basic facts.

Now, whether you add this in here as part of the stipulation or whether you argue it as certainly you will have to fully in your brief, is immaterial. It isn't anything that I can rule in favor of the Government on the basis of the added material. It is something that I am going to have to consider and what you are adding here is essentially argument.



Mr. Jinkinson: Here is what we don't want to do, your Honor: We don't want to be under this order. We don't want to say the meaning of the word principal would read that plaintiff makes three objections. We don't make three. We make more than three.

The Court: I am jumping right down to here because I think the addition of principal or the addition of wages, or the substitution of the word compensation for wages—

Mr. Jinkinson: Wages were substituted for compensation.

The Court: Yes. All they have done here is underlined [fol. 876] the added material.

Mr. Jinkinson: Yes.

The Court: So I have this before me now.

Mr. Jinkinson: What we would like, of course, is we wanted to reserve, the Government wants to reserve the right to raise the legal question as to whether or not Bowman's cost studies are within the scope of the meaning of the section of the Clayton Act.

The Court: I don't see how you waive it by stipulating the cost studies.

Mr. Jinkinson: Just so we don't.

The Court: Do you think they do, by stipulating the cost studies? I mean, that is like saying that because you permit a witness to testify that you admit the weight of his testimony. The weight of his testimony is still subject to argument before the jury or before the Court. All you are saying here is that along with his testimony you want to put into the record the fact that you want to argue the weight of it. That is in effect what you are saying here. I don't see that it makes any difference whether you add this or not. I would expect you to argue the weight of it anyway.

Mr. Jinkinson: That is what we want to do.

Mr. Hart: It would make a difference to me, if the Court please.

[fol. 877] The Court: How does it make a difference to you?

Mr. Hart: Well, here is the situation: If this objection is raised to the cost study as such, then I feel that I ought to come forward with additional evidence to show the underlying basis for Mr. Bergfeld's treating, for instance, to give one example of it, commissions as a part of the drivers' compensation.



The Court: The drivers' compensation?

Mr. Hart: Yes. There is an awful lot of actual factual background. If they don't stipulate that it goes as a—

The Court: I would like to keep it out to hold down the cost here, as well as everything else, as well as my time. I think as a matter of fact that this does not go to the validity of the stipulated testimony at all.

Mr. Hart: No, I agree with you.

The Court: I think it is purely argumentative.

Mr. Wooley: Now, over here, if the Court please,—

The Court: You stipulate that this is the survey, too?

Mr. Long: That is right.

The Court: You stipulate that this is what he would [fol. 878] testify if he were put on the stand.

Mr. Long: Over here on this next page plaintiff does not concede that the defendant Bowman's cost studies are within the meaning of Section 2-A of the Clayton Act.

The Court: That is also argumentative. If I were sitting in the trial of this case I would permit the cost studies in evidence and tell you to argue the validity of it in your brief.

Mr. Long: That is fine.

The Court: Whether or not I was with you or whether they are within that provision.

Mr. Long: That is fine.

The Court: Certainly I would not keep that on the trial of this case in open Court, I would not keep them from introducing these cost studies. As a matter of fact, as to the admissibility of the cost studies, I would overrule your objection if we were actually in the trial of the case and then I would say "Argue the weight of it."

All of the facts now being in the record argue the weight and the conclusions to be drawn from those facts in your brief.

Mr. Jinkinson: We have the right to incorporate in our rebuttal more fully all of the factual accounting in legal [fol. 879] objections to Bowman's cost.

The Court: The only restriction that I would put on you on that is this: That I am trying in the interest of both of you to hold the record as low as I can. Now, if your rebuttal is going to go too far into detail then I have got to

permit them to put more detail into the original stipulation.

Anticipating what is in your mind, I don't think it is a tactical advantage either way, and I think that is what is concerning you.

Now, I cannot be any fairer or more honest with you, with both sides, than to say that I don't think it constitutes a tactical advantage to either one of you to go more greatly into detail. If, when I read your argument on these cost studies, I find that I would like greater detail I would send for both of you and say, "Well, bring in the thing and I want to ask him a few questions and when I am through then both of you can ask him something." Other than that, I don't see that it is helping or hurting either of you, either to add this or to leave it out. And since we had agreed on it, heretofore, and since by putting this in they may want to add more detail—

Mr. Hart: That is right.

The Court: —if they add more detail then you are going [fol. 880] to have to go more fully into rebuttal. I think both of you are borrowing trouble.

Mr. Hart: In other words, I feel this way, if the Court please: I am afraid to rest with the amendments they have in there. I feel that I have to go on.

The Court: Even with my assurance that it does not give them a tactical advantage?

Mr. Hart: Because I have not really put in all the facts that I might.

The Court: I understand.

Mr. Hart: That is just my suggestion.

The Court: Then, of course, if you put the rest of it in then you open it up pretty largely to rebuttal.

What did you want to tell me?

Mr. Wooley: I want to make clear that in our thinking in the formulation of Paragraph 28 we were assuming to start with that there were certain detailed criticisms we were going to make of their cost study which even though you should rule in our favor on these particular major points, we could show there are differences resulting from their study which would be reduced by virtue of the correction of the technicalities in the system I find in error.

The Court: Yes, but of course, that you intended to do in your brief.

[fol. 881] Mr. Wooley: We will do that in rebuttal.

The Court: As a matter of argument.

Mr. Wooley: I want to make sure we were not precluded from doing that.

The Court: Not only are you not precluded but I would expect you. I would regard that pretty largely as a matter of argument.

Mr. Long: Yes, sir.

The Court: Rather than stipulation in rebuttal.

Mr. Jinkinson: With that understanding we ought to enter this order.

The Court: I don't see how the Government is prejudicing its position at all.

Mr. Jinkinson: All right.

The Court: I certainly expect you to argue fully what you would be putting in the smallest capsule form. If I permitted this addition to the stipulation I would expect you to argue fully in your brief. Is that clear?

Mr. Long: That is clear.

The Court: Are there any questions about it?

Mr. Hart: All that order has added to it, Earl, is this list of exhibits which I have given to Bert.

The Court: Was there one more change in 31?

Mr. Long: 31 is within that same category.

The Court: In the same general—

[fol. 882] Mr. Long: Yes, Paragraph 29, your Honor.

The Court: 29 was down lower here.

Mr. Long: Yes. That we talked about—

Mr. Wooley: That is merely affecting the status of the record as it now exists with respect to 29.

Mr. Hart: That we have no objection, isn't that right, John?

Mr. Stevens: That is right. My suggestion was that you change it right on the Court's copy. That was the only change.

Mr. Wooley: There is another correction.

Mr. Long: That doesn't make any difference. We were going, as I recall the record, your Honor, we objected to those last two sentences and you said, "I will overrule your objection but your objection will be noted."

The Court: That is right.

Mr. Long: I think Mr. Jinkinson is going to renew that objection here when this is ended formally.

The Court: Yes, that doesn't require any change in the order.

Mr. Long: No.

SUPPLEMENTAL PRE-TRIAL ORDERS AS TO BOWMAN  
TO BE ENTERED

The Court: All right. Then with the understanding that I have just stated to counsel, the supplemental pre-trial [fol. 883] order will enter.

Mr. Jinkinson: We would like, of course, to enter the following objections in seriatim order to the paragraphs, Bowman supplemental pre-trial order at the time said order is entered, and I have a list of them here for Mr. Ruhe.

The Court: Yes.

Mr. Jinkinson: I will hand them to him so that he can incorporate them.

The Court: Yes. Those were the ones we discussed heretofore?

Mr. Long: Yes.

The Court: Let the record show that they may be submitted at this time and having been previously discussed and argued are for the reasons at that time indicated here now overruled.

Mr. Jinkinson: I will just hand Mr. Ruhe the list and let him enter it in the record.

The Court: Just hand him those for the record.

(The objections referred to is in words and figures as follows:)

[fol. 884]

| Paragraph Numbers | Grounds of Objection  |
|-------------------|---|
| 1 to 18           | Immaterial  |
| 27                | Immaterial as to 1st-3rd<br>Cost Study Assignment,<br>pp. 13-15   |
| 29                | Object to the last two sentences as being argument and not facts. |

|               |             |
|---------------|-------------|
| 36 through 56 | Immaterial  |
| 58 through 60 | Irrelevant  |
| 62 through 74 | Immaterial  |
| 77            | "           |
| 78 and 79     | Irrelevant" |

Mr. Hart: We will hand him all the exhibits.

The Court: Yes.

Mr. Jinkinson: That the Bowman order has been entered, we will now give Borden his proposed—we have typed the proposed rebuttal of Borden and Bowman and will get to you. We will try to get it to you by the last of January.

The Court: All right. You will deliver Borden's now and Bowman's at the end of January.

Mr. Jinkinson: Yes, by the end of January.

The Court: Now, we better give them a short time to digest it and then come in for a further conference at [fol. 885] which time we will set brief filing dates.

Mr. White: Your Honor, could I ask one question here?

The Court: Yes, certainly.

Mr. White: Won't the same cost experts the Government expects to use also be used with respect to the Bowman order?

The Court: I think so.

Mr. White: Then wouldn't it be appropriate——

The Court: Is that right?

Mr. Jinkinson: Yes.

Mr. White: Wouldn't it be appropriate if we find it necessary to take depositions to wait until Bowman has theirs and do it all at one time?

The Court: And save the Government's time and expense, I think so.

Mr. Jinkinson: We can take them all at one time.

Mr. White: I suggest that we establish a date sometime after Bowman receives their material.

The Court: Probably the early part of February. Does that sound right?

Mr. Jinkinson: Yes.

The Court: Sometime, let us say then between the 10th and 20th of February these further depositions are to be taken and then shall we allow a reasonable time for the [fol. 886] writing of the depositions and the redrafting of

the rebuttal evidence and set a further pre-trial for around March 10th? Does that sound satisfactory?

Mr. Jinkinson: That is satisfactory.

The Court: What day of the week does that happen to fall on?

Mr. Jinkinson: I have a calendar.

The Court: March 15th is on a Friday, or on a Saturday.

Mr. Wooley: The 14th would be all right.

The Court: The 14th at two o'clock, how would that suit you gentlemen?

Mr. Jinkinson: Fine.

The Court: For further pre-trial, at which time we ought to set the filing of briefs, which ought to hit it just about right.

Mr. Jinkinson: You mean so we have something for the summer.

The Court: Yes, because next summer is my Sabbatical.

Mr. Jinkinson: It is?

The Court: Every five or seven years around here I get the summer off. So I will devote it to the milk industry.

That ought to hit it just about right. Then we will allow a reasonable time for briefs which should get it to me about [fol. 887] the middle or end of June.

Mr. Jinkinson: That is right.

The Court: That would be just a good time and then I will be ready for you in the fall. One or the other of you will then be heading to the Supreme Court again. This doesn't go to the Court of Appeals. It could if the Government asked for it to go to the Court of Appeals?

Mr. Jinkinson: We have such complete confidence in this case that we have not looked that far ahead.

Mr. Hart: We will go wherever they want us to.

The Court: Well thank you very much. I think this is moving along very well and you will certainly save us a lot of time.

(Which were all of the proceedings had at the pre-trial conference.

[fol. 889] IN UNITED STATES DISTRICT COURT, NORTHERN  
DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 51 C 947

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE BORDEN COMPANY, ET AL., Defendants

SUPPLEMENTAL PRE-TRIAL ORDER AS TO BOWMAN DAIRY—  
December 23, 1957

The Court having met with counsel for the parties from time to time subsequent to the entry of the supplemental pre-trial order of November 8, 1955, the defendant Bowman Dairy Company having submitted its defensive material to the plaintiff, the plaintiff having had an opportunity to take depositions and otherwise to analyze and review said defensive material, and the plaintiff and the defendant Bowman Dairy Company having come to certain further agreements,

It is Ordered:

1. This order is a supplement to the pre-trial order entered in this cause on November 8, 1955;
2. The provisions of paragraphs 2, 3, and 4 of the supplemental pre-trial order entered on November 8, 1955 are applicable to this supplemental pre-trial order.

[fol. 890] Agreements of Fact Between Plaintiff and the  
Bowman Dairy Company

1. The *Local Community Fact Book for Chicago, 1950*, was compiled and published through the facilities of the Community Inventory of the University of Chicago. Active participation in the planning of the fact book was the work of a research committee selected from representatives of the following agencies and including the following persons:

|                                |  |
|--------------------------------|--|
| Frank Bauer                    | Chicago Department of Health                         |
| Mrs. Linn Brandenburg          | Community Fund of Chicago                            |
| John Gandy                     | Welfare Council of Metropolitan Chicago              |
| Mrs. Louise Gilfillan          | Chicago Department of Welfare                        |
| Philip M. Hauser<br>(Chairman) | Chicago Community Inventory                          |
| Mrs. Evelyn M. Kitagawa        | Chicago Community Inventory                          |
| Ray G. Nelmer                  | Chicago Tribune                                      |
| Robert L. Seidner              | Chicago American                                     |
| Miss Ethel Shanas              | Office of the Housing and Re-development Coordinator |
| DeVer Sholes                   | Chicago Association of Commerce and Industry         |
| Miss Doris Strail              | Tuberculosis Institute of Chicago and Cook County    |
| Miss Barbara Wallace           | Welfare Council of Metropolitan Chicago              |

2. Most of the data contained in the Fact Book have been compiled from published United States census materials or [fol. 891] from summary punch cards and photostatic copies of detailed census tract tabulations purchased from the U.S. Bureau of the Census. Data from sources other than the Bureau of the Census are included, however, as a result of cooperation of local agencies, including the Chicago Department of Health, the Cook County Department of Welfare, the Chicago Department of Welfare and the Tuberculosis Institute of Chicago and Cook County.

3. The first eight paragraphs of the introduction to the *Local Community Fact Book for Chicago, 1950*, read as follows:

"In his introduction to the first *Local Community Fact Book*, published in 1938, the late Professor Louis Wirth observed that: 'The modern metropolis is a city of local communities, each one differentiated from the others by its characteristic function in the total economy and cultural complex of city life.'



"Certainly this observation is verified in the experience of all the inhabitants of a great city. For in addition to identification with the city as a whole, each person is also identified with various sub-areas within the metropolis—the specific community in which he lives, the area in which he works, the various areas in which he shops, seeks recreation, visits friends, and pursues the manifold activities that fill the life space of the urbanite.

"To action agencies within the city—business, industry, labor, government, welfare, health, education, and the like—no less than to the individual, the city is also a congeries of economic, political and social worlds. Problems of day-to-day functioning—whether they be seeking markets, employing labor, distributing newspapers, administering the schools, providing public housing, conducting welfare programs, conserving deteriorating areas, or selecting industrial sites—necessarily involve consideration of specific communities within the city.

"For more than a generation various agencies within Chicago have viewed the city as comprising 75 Local Community Areas. These areas were delineated [fol. 892] through the work of the Social Science Research Committee of the University of Chicago, building upon the years of research activity of its predecessor, the Local Community Research Committee, with the cooperation and concerted effort of many local agencies and the United States Bureau of the Census. The boundaries of the 75 Community Areas within the city were based on several considerations, chief among which were: (1) the settlement, growth and history of the area; (2) local identification with the area; (3) the local trade area; (4) distribution of membership of local institutions; and (5) natural and artificial barriers such as the Chicago River and its branches, railroad lines, local transportation systems, and parks and boulevards. The actual boundaries drawn for each Community Area were necessarily a compromise of these several factors, and involved also consideration of the tabulation requirements of the U.S. Bureau of the Census which tended to restrict the total num-

ber of such areas. Moreover, in designing the Community Areas it was also necessary that they comprise complete census tracts, so that census statistics could be compiled to study the characteristics and changes in the characteristics of the local communities.

In consequence, the Community Area may be regarded as a statistical unit for the analysis of internal changes within the City of Chicago, made up of census tracts but having, in the main, a history of its own as a community, a name, and an awareness on the part of its inhabitants of some common interests. The Community Areas are in one sense, therefore, arbitrary statistical units for effecting comparability in a study of population, land use and other changes within Chicago; but most of them are also historical entities and contain persons aware of common community interests.

*Previous Statistics for Community Areas.* Statistics for the 75 Community Areas were first published in the volume *Census Data of the City of Chicago, 1930*, edited by Ernest W. Burgess and Charles Newcomb (The University of Chicago Press, 1933). Professor Burgess, it should be noted, was chiefly responsible for the research activities which produced the census tract grid of the City of Chicago for the 1920 Census, and the planning of the special tabulation of census tract statistics based on the 1920 Census and published in *Census Data of the City of Chicago, 1920*, edited by Ernest W. Burgess and Charles Newcomb.

[fol. 893] Additional statistics for the 75 Community Areas, subsequent to those which appeared in *Census Data of the City of Chicago, 1930*, appeared in the *District Fact Book*, published in 1935 by the Chicago Board of Education, the Chicago Recreation Commission and the Illinois Emergency Relief Commission. The *District Fact Book* was compiled as a manual for civic and social agencies interested in facts about sub-areas within the City of Chicago and contained 1934 and 1930 census data. The first *Local Community Fact Book*, 1938, edited by Louis Wirth and Margaret Furez, was in fact a revised edition of the *District Fact Book* containing in addition to revisions in form, more detailed statistical data and expanded histories of the

Community Areas. The second *Local Community Fact Book of Chicago*, edited by Louis Wirth and Eleanor H. Bernert, was published in 1949, under the auspices of the Chicago Community Inventory, and contained largely comparative statistical data for each Community Area based on the 1940 and 1930 Censuses, together with other selected statistics.

"Between the publication of the first and second *Local Community Fact Books*, the Chicago Plan Commission and Works Projects Administration published separate pamphlets, *Housing in Chicago Communities*, for each of the 75 Community Areas containing some of the data collected in the Land Use Survey of 1939 and also selected census data from the 1934 and preceding census. To complete the references to comprehensive source data published for all local areas within the City, mention should be made of the volume *Census Data of the City of Chicago, 1934*, edited by Charles Newcomb and Richard O. Lang and based on the special 1934 Census of Chicago which was compiled as a project of the Civil Works Administration. This volume presented statistics for the 935 census tracts but did not summarize the Areas."

4. The Local Community Area known as Englewood is bounded on the north by Garfield Boulevard, on the west by Racine Avenue, on the south by the Belt Line Railroad and 76th Street, and on the east by the Chicago Rock Island and Pacific Railroad. The boundaries of Englewood are more clearly delineated on the map attached hereto as Bowman Exhibit 1.

5. The *Local Community Fact Book for Chicago, 1950*, states that there were 309 retail food stores in Englewood in 1948, and that the population of Englewood in 1950 was 94,134.

[fol. 894] 6. The Bowman store customer identified as "Charlie's Market stop" on page 43 of Plaintiff's Exhibit 5 and sometimes referred to as "Goldenstern's", is located in Englewood.

7. The Local Community Area known as Greater Grand Crossing is an irregularly shaped area bounded generally on the west by the Chicago, Rock Island, Pacific Railroad tracks, generally on the northeast by the New York Central

Railroad tracks (except that it also includes the Oakwood Cemetery and certain adjacent territory to the north of said railroad tracks and east of Cottage Grove Avenue), on the east by the Illinois Central Railroad tracks, and on the south by 79th Street. The boundaries of Greater Grand Crossing are more clearly delineated on the map attached hereto as Bowman Exhibit 1.

8. The *Local Community Fact Book for Chicago, 1950*, states that there were 200 retail food stores in Greater Grand Crossing in 1948, and that the population of Greater Grand Crossing in 1950 was 61,753.

9. The Bowman store customers identified as "A & P stop" and "Kroger stop" on page 43 of Plaintiff's Exhibit 5, are located in Greater Grand Crossing.

10. The Local Community Area known as Brighton Park is bounded on the west by the Atchison, Topeka and Santa Fe Railroad, on the north by the Illinois-Michigan Canal, on the east by the Pittsburgh, Chicago, Cleveland and St. Louis Railroad and by Western Avenue, and on the south by the Chicago River and the Indiana Railroad. The [fol. 895] boundaries of Brighton Park are more clearly delineated on the map attached hereto as Bowman Exhibit 2.

11. The *Local Community Fact Book for Chicago, 1950*, states that there were 226 retail food stores in Brighton Park in 1948, and that the population of Brighton Park in 1950 was 41,345.

12. The Bowman store customer identified as "Psonakos's stop" on pages 36-37 of Plaintiff's Exhibit 5, is located in Brighton Park.

13. The Local Community Area known as Gage Park is bounded on the west by the Grand Trunk Western Railroad and the Atchison, Topeka and Santa Fe Railroad, on the north by the Chicago River and Indiana Railroad, on the east by the Pittsburgh, Chicago, Cleveland and St. Louis Railroad, and on the south by 59th Street. The boundaries of Gage Park are more clearly delineated on the map attached hereto as Bowman Exhibit 2.

14. The *Local Community Fact Book for Chicago, 1950*, states that there were 121 retail food stores in Gage Park in 1948, and that the population of Gage Park in 1950 was 30,149.

15. The Bowman store customer identified as "A & P stop" on pages 36-37 of Plaintiff's Exhibit 5, is located in Gage Park.

16. The A & P store at 2601 West 51st Street is located on the south side of 51st Street approximately four blocks east of California Avenue and four blocks west of Western Avenue; none of the streets between California and Western Avenues crosses the railroad yards and manufacturing district which lie north of 50th Street and south of 48th Street; there is no parking lot adjacent to, or in the immediate vicinity of, the A & P store at 2601 West 51st Street.

17. Prior to October 8, 1949, the Kroger Company operated a store at 2602 West 47th Street; the Bowman Dairy Company delivered approximately four cases of dairy products per day to said store; prior to October 8, 1949, the Bowman Dairy Company delivered approximately five cases of dairy products per day to the Psomakos store at 2414 West 7th Street; the Kroger Company closed its store at 2602 West 47th Street on October 8, 1949, and did not thereafter reopen said store.

18. The Manual Entitled "Establishing and Operating a Grocery Store—Industrial (Small Business) Series No. 21" published by the United States Department of Commerce, Bureau of Foreign and Domestic Commerce, in 1946, stated, at page 28:

"From practical experience many neighborhood grocers in congested city areas have determined that most of the business comes from within a quarter of a mile of the store and a fair amount from the second quarter-mile area. The average small store can expect little business beyond the half-mile limit, unless, of course, the location is rural."

A copy of this manual is available in the library of the offices of the U.S. Department of Commerce, in Room 1302, at 226 West Jackson Boulevard, Chicago, Illinois.

19. Elrick & Lavidge, Inc., is a firm of marketing consultants with its office at 176 West Adams Street, Chicago, Illinois. Elrick & Lavidge, Inc. is the successor of Elrick, Lavidge & Company.

[fol. 897] 20. Elrick & Lavidge, Inc. is engaged in the business of doing market planning and research for business organizations. As a part of its regular duties, it explores new market opportunities for new and existing products, appraises sales methods and procedures, and evaluates advertising and promotion activities. In connection with its work in appraising sales methods, Elrick & Lavidge, Inc. frequently measures and analyzes competitive situations. It conducts studies of retail competition in the regular course of its business.

21. Elrick & Lavidge, Inc. has a regular staff of men who have had long experience and professional training in marketing planning and research. Robert F. Elrick, the president of Elrick & Lavidge, Inc., has been continuously engaged in this work since 1934.

22. The clients served by Elrick & Lavidge, Inc. include manufacturers, distributors, retailers, trade associations, publications and professional organizations. These clients are located in all parts of the United States, in Canada and also in Europe. Prior to October 15, 1955, Elrick & Lavidge, Inc. had never done any work for the Bowman Dairy Company or its attorneys.

23. If called as a witness for the purpose of direct examination on behalf of defendant Bowman Dairy Company, Robert F. Elrick would testify that Elrick & Lavidge, Inc. was employed by the attorneys for the defendant Bowman Dairy Company to conduct a survey to measure the extent [fol. 898] of possible customer competition, if any, between the Bowman store customers identified on pages 36, 37 and 43 of Gorand's 1951 Edition Street Map of Chicago and Suburbs (Plaintiff's Exhibit 5); that thereafter such a survey was conducted under the personal supervision and direction of Robert F. Elrick; and that the results of that survey are summarized in the report which is identified as Bowman Exhibit 3, together with the maps which are identified as Bowman Exhibits 3A, 3B, 3AA, and 3BB.

24. Plaintiff stipulates that Robert F. Elrick is qualified, by reason of his professional training and experience, to conduct such a survey and to testify as an expert with respect to it; that the survey described in Bowman Exhibit 3 was in fact conducted; and that, for the most part, the persons interviewed in connection with said survey do in

fact reside at the addresses given to the interviewers. Plaintiff does not accept the results of said survey as a correct measurement of the extent of competition between the customers identified therein.

25. If called as witnesses, each of the interviewers used by Elrick & Lavidge, Inc. in conducting said survey, would testify that he has had prior experience conducting such interviews; that in connection with this survey, he was instructed to use the same methods of obtaining interviews that he had customarily used in the past; that he did not know that the survey was to be used in connection with pending litigation; that he did not know the identity or even the type of company for which the survey was being [fol. 899] conducted; and that in working on this survey he in good faith endeavored to obtain as many interviews as possible from persons over 18 years of age making purchases at the designated locations.

26. The maps which have been marked as Bowman Exhibits 3AAA and 3BBB respectively, were prepared under the direction of Robert F. Elrick for the purpose of providing the Court and counsel with a convenient summary description of the more complete presentation depicted by the maps identified respectively as Bowman Exhibits 3AA and 3BB. These exhibits (unlike Exhibits 3A and 3B) do not show residences of all customers interviewed, but show residences of only those living within a quarter-mile radius of each store.

27. If called as a witness for the purposes of direct examination on behalf of defendant Bowman Dairy Company, A. J. Bergfeld would testify as follows:

I was graduated from Antioch College in 1934 and immediately made a connection with my present firm of Stevenson, Jordan & Harrison, whose principal offices are in New York City, as a junior staff man. With the exception of approximately two years, during which I served in the Navy, I have been connected with that firm ever since. I am a senior partner at this time and have been for the last six years.

This firm has engaged in the analysis of cost and management problems of the dairy industry since 1938. These activities have included consultation service with [fol. 900] individual dairy managements, associations

of dealers, university research groups, state milk market administrators and state agricultural commissions, as well as associations representing the manufacturers of products used by the dairy industry.

In our experience in connection with such analyses of cost and management problems of the dairy industry over those 17 years, we have had occasion to study 107 dairies in 19 cities. We have made time study analyses of 280 retail routes making 43,749 home delivery calls and 187 store routes making 7,694 deliveries to separate stores. In addition, we have applied standard time data and made time studies on cost determinations on 1960 routes serving 502,650 home delivery customers, 439 routes serving 17,109 store customers and 27 routes serving 1,069 so called wholesale customers. These studies have covered at least segments of the whole of the dairy industry serving the following cities: New Haven, Connecticut, Waterbury, Connecticut, Bridgeport, Connecticut, New York City, Buffalo, New York, Birmingham, New York, Amsterdam, New York, Philadelphia, Pennsylvania, Newark, New Jersey, Wilmington, Delaware, Baltimore, Maryland, Fort Wayne, Indiana, Cleveland, Ohio, Akron, Ohio, Detroit, Michigan, Chicago, Illinois, River Forest, Illinois, St. Louis, Missouri, and Washington, D. C.

[fol. 901] Our work has included the following types of services: product cost determination, establishing standard cost procedures for processing and bottling plants, analysis of processing and bottling methods, time study analyses of route distribution functions on store and home routes, determination of distribution costs on routes by functions and by products, analyses of price-cost relationships, establishment of volume discount plans based upon delivery costs to retail store and wholesale customers, establishment of control procedures for route administration, synthesis of model dairy plants and distribution systems, including equipment and operating costs, and study of alternative costs and distribution methods.

Our first assignment with Bowman Dairy Company was in connection with an analysis of their costing pro-



cedures undertaken first in the latter months of 1947 and terminating in a report submitted in January, 1948. This analysis included the determination of actual product costs for products distributed through the Englewood Division of that Company according to the techniques and cost procedures which we have found to be most logical and most directly applicable to the dairy industry. These costs, determined by our techniques, were then compared with the costs determined by Bowman Dairy Company and the differences were pointed out and discussed. This study began with the receipt of milk at the Englewood Division distributing point and included all costs created at the division and on the routes. Unit product costs of distribution were determined by time studies under our supervision of actual routes in operation, an analysis of expenses incurred in the operation of routes and the serving of customers and the distributing of products. No analysis of plant processing and bottling costs was included.

The second assignment for Bowman Dairy Company was undertaken early in 1948 and a report was submitted in April of 1948. The purpose of this study was to determine whether costing methods established by that company in the past yielded accurate product costs and adequate cost controls by the company's current operating methods. The analysis was based upon detailed studies of operating methods and procedures in the plant by stop watch and the expenses incurred for the operations within the plant. Complete unit product costs were determined for all products processed and handled in the River Forest Plant of Bowman Dairy Company with all items of cost determined by our techniques except for the determination of raw milk costs and the costs of conveying the raw milk to the city plant.

The third assignment given Stevenson, Jordan & Harrison by Bowman Dairy Company was to install a standard cost procedure in a subsidiary plant of Bowman Dairy Company. This involved a complete analysis of all operations in the plant, the development [fol. 903] of standard time data upon which labor costs

were based, and an analysis of expenses to determine the amount of each item of expense which should be born by each product. Following this determination of costs for product cost, controls were set up on the basis of the studies made in the plant. Following the completion of this standard cost installation, time studies were undertaken in three other plants in the company leading to the determination of standard labor costs for each operation in these plants and a total unit product cost and cost controls.

The next assignment undertaken by our firm for Bowman Dairy Company was to assist in developing volume service discount plans to home delivery customers and to store customers. We also prepared the cost data needed in formulating these plans. This first required time standards for delivery operations. Time study observations were accumulated by supervisory personnel at distributing divisions under our supervision and the time standards were developed from data by our staff members. These standards were the basis for computing accurate delivery costs and eventually became the basis for developing discount schedules. We have further studied route performances and measured them with time standards to analyze and improve loss routes. In conjunction with this, there has been development of new control techniques which will supplement present route administration procedures.

[fol. 904] All of the assignments given our firm by Bowman Dairy Company have been carried out under direct supervision and control by myself. With some few exceptions, men from our firm have been assigned to various types of studies carried on on behalf of Bowman Dairy Company, since the year 1948. Immediately after a decree was signed by Judge Igoe of the District Court for the Northern District of Illinois in December of 1952, we began developing cost data for the Bowman Dairy Company for the purpose of the classification by that Company of its store customers under certain permissive portions of that decree. In developing cost data to be used in the establishment of discount and rebate schedules we eliminated from our

considerations the costs of placing a package of milk on the delivery platform of the company, and confined our studies to the costs of delivery from the platform to the customer. In connection with the assignment, we have developed a manual for the determination of cost to particular customers based upon our previous studies, time analyses and experience. [A copy of which manual is marked Bowman Exhibit 4 and is hereto attached and by reference made a part hereof.] As will appear in that manual, we determined certain curves which show the cost of serving customers buying certain specified quantities of dairy products converted to quart standards. Based upon these cost curves, the limits of margin available for the purpose of paying discounts have been determined for use by the management of the company. [Discount schedules published since January 1953, hereto attached and marked "Discount Schedules 1 to 9", inclusive, have from time to time been turned over to us for study. These discount schedules are marked Bowman Exhibits 5 through 13, inclusive.]

From time to time thereafter, we have been asked to apply the current discount schedule then in force to certain specified segments of the Bowman Dairy Company delivery system to determine whether or not the discount schedules so published, when compared to the discount being allowed to the so-called corporate chains, represented an equitable system which reflected actual cost savings. [Examples of such studies are hereto attached, marked respectively Bowman Exhibits 14, 15 and 16. Bowman Exhibit 14 bears the title "Tests of Two Specific Routes Investigated by the Government", and includes four specific tests each for the month of March, 1955. Bowman Exhibit 14 is sometimes referred to as the "March, 1955 Tests". Bowman Exhibit 15 bears the title "Test of Bracket Discount Plan Effective September 26, 1955". Bowman Exhibit 16 bears the title "Test of Store Discount Plan Effective January 2, 1956".] These reports have been designed to determine the equity of the discount schedule when compared to the discounts or prices granted to the various corporate chains and also to determine the equity of the classification of the sales to independ-

[fol. 906] ent stores based upon their volume of purchase.

The last page of the Manual for Establishing and Testing a Store Discount Schedule, Bowman Exhibit 4, is entitled "References". The forms therein referred to by number are Bowman Dairy Company forms used in the ordinary course of business in connection with the functions of the accounting department either at Divisions or in the Head Office. They had, in connection with the data used in the establishment of the Manual, been used in the ordinary course of business for the month of November 1954, and the data supplied on the said forms had been entered on the forms in the course of such business. The Company made available to us their general accounting records in their entirety audited yearly by Arthur Andersen & Company, Certified Public Accountants. We had occasion from time to time to refer to these general accounting records for the purpose of checking items included in sales delivery and collection expenses. We found proper verification of the summary of data from the forms used by us.

The last page of Bowman Exhibit 14 (the Discount Schedule Tests for March 1955) is also entitled "References". The forms therein referred to by number are Bowman Dairy forms and used in the ordinary course of business, as were those in connection with the preparation of the Manual. There were available to us in connection with the performance of these tests [fol. 907] all of the accounting records of the Company used in the ordinary course of business, and we had occasion from time to time to check the summary of sales delivery and collection expenses against the general accounting records of the Company and found that the entries showed accounting agreement.

The additional tests, particularly that of the store discount plan effective January 2, 1956 (Bowman Exhibit 16), contain a similar reference page and the same situation remained true throughout this period of time in connection with the test of the discount schedule then in effect and our method of procedure did not vary from that described in the test for the discount

schedules for March 1955 (Bowman Exhibit 14). We have at all times had available to us all of the accounting records of the Company, together with the audits made by Arthur Andersen & Company for each year that they had been completed. Our check of the records which we used against the general accounting records of the Company and the audits satisfied us that the records which we were specifically using for the establishment of the Manual and the making of the tests were accurate and used in the ordinary course of business by the Company for the sake of determining the operations and profit and loss of the Company.

28. Plaintiff makes three objections to the method of testing discounts described in the basic manual (Bowman [fol. 908] Exhibit 4) and employed in the March 1955 tests (Bowman Exhibit 14). These three objections are: (1) Plaintiff does not agree that an adequate sample of routes was used for the purpose of making the time studies used to develop the standard time allowances for the work elements described in Appendix A to the basic manual (Bowman Exhibit 4). The basis of plaintiff's objection is that the 55 time studies which were used in obtaining time data were all taken on routes operating out of the Elston Division. (2) The method of testing discounts described in the basic manual (Bowman Exhibit 4) and employed in Bowman Exhibit 14, assumes that the total cost per route per day, calculated as shown on Schedule 6 of the basic manual (Bowman Exhibit 4) and Schedule 1 of Bowman Exhibit 14, reasonably may be apportioned among different Bowman store customers on the basis of the standard time required by Bowman drivers to perform the services received by those different customers. Plaintiff takes the position that the total cost per route day may not be apportioned among customers on the basis of route drivers' time. Plaintiff would accept an apportionment of drivers' compensation among different customers on the basis of drivers' time, but plaintiff contends that it is not acceptable to apportion the total cost per route day among different customers on the basis of drivers' time because the total cost per route day includes items of cost in addition to drivers' compensation (see Schedule 6 of Bow-

man Exhibit 4 and Schedule 1 of Bowman Exhibit 14). (3) Plaintiff takes the position that the cost studies should [fol. 909] have included an analysis of the Central Office overhead, including such items as executives' salaries and other costs incurred in the Central Office of the Bowman Dairy Company, and that such additional elements of cost should have been apportioned among the different customers of Bowman Dairy Company.

29. The second of the three objections made in paragraph 28 is plaintiff's principal objection to the cost defense offered by the defendant Bowman Dairy Company. Defendant concedes that if the Court accepts plaintiff's second objection to the cost studies, the Court could find that the price differences identified on Schedule 1 of the pre-trial order have not been shown by the evidence proffered by the defendant Bowman Dairy Company in this case to be fully and completely cost justified by cost differences. Defendant Bowman Dairy Company further concedes that if the Court should accept the plaintiff's position on either the first or the third of the above objections, and if it should further find that these objections constitute material defects in the Bowman cost defense which tended to establish a greater cost differential than would have been established if these claimed defects had been corrected, the Court might find that the price differences identified on Schedule 1 of the pre-trial order have not been shown by evidence proffered by Bowman Dairy Company in this case to have been fully and completely justified by cost differences. Both parties agree that cost accounting is not and can never become an exact science because of the [fol. 910] inherent element of judgment. For this reason, it is stipulated that the cost accounting and cost analysis submitted on behalf of the defendants should be accepted as reasonable approaches to accuracy and not as precise measurements.

30. Bowman Dairy Company represents that in order to base prices and sales policies on anticipated costs, assumptions are required as to basic operating and delivery conditions. The discounts shown on Schedule 1 of the pre-trial order and the exhibits thereto attached are discounts determined on the basis of anticipated costs. The accounting principles relied on in the basic manual (Bowman Exhibit 4) and thereafter employed in the various tests

(Bowman Exhibits 14, 15 and 16) were actually used by the Bowman Dairy Company during the period since February 19, 1953 as the basis for establishing discounts.

31. Except for the foregoing three objections, and one further objection to the test of the store discount plan effective January 2, 1956 (Bowman Exhibit 16) based on its analysis of sales of glass and fiber containers, which objection will be set forth in the plaintiff's rebuttal material, plaintiff has no objection to the validity of the cost studies submitted by the defendant Bowman to justify the differences in prices and discounts to Bowman store customers identified in the plaintiff's affirmative case. If the Court finds and concludes: (1) That the 55 time studies of Elston Division Routes provided an adequate sample of Bowman [fol. 911] store routes for the purpose of developing time standards; (2) that the total cost per route day may be apportioned among store customers on the basis of driver's time; and (3) that the omission of Central Office overhead from the cost studies is not a material defect in those studies, then the Court should find and conclude that the price differences identified on Schedule 1 of the pre-trial order were fully justified by cost differences.

32. Plaintiff agrees that Schedule 6 of Bowman Exhibit 4 contains an accurate statement of expenses, number of route days, and cost per route day for the Elston Division of the Bowman Dairy Company for the month of November, 1954, and that Schedule 1 of Bowman Exhibit 14 contains an accurate statement of expenses, number of route days, and cost per route day for the South Division of the Bowman Dairy Company for the month of March, 1955.

33. If called to the stand for the purpose of cross examination by the plaintiff, A. J. Bergfeld would testify that the additional time studies of routes in the Forest, Englewood and South Divisions were taken to determine whether or not substantial differences in delivery methods or times existed in other divisions of the Bowman Dairy Company which would require a broader sampling of routes than that provided by routes operating out of the Elston Division; that on the basis of his review of the data obtained from these additional studies (which were made in 1949), he formed the opinion that delivery time standards [fol. 912] developed on the basis of the studies of Elston Division routes would be valid for all store routes operated

by the Bowman Dairy Company. Comparisons of time data recorded on routes of the other divisions with that recorded in Elston Division, did not disclose any significant differences which required a modification of his judgment that the Elston time standards are valid for all store deliveries.

34. If called to the stand for the purpose of redirect examination on behalf of the defendant Bowman Dairy Company, A. J. Bergfeld would testify that in his opinion, the apportionment of the total cost per route day among different customers on the basis of driver's time is in accord with sound and accepted principles of cost analysis. In support of this conclusion, he would point out that expenses, other than drivers' compensation, incurred at the distributing division (see Schedule 6 of Bowman Exhibit 4 and Schedule 1 of Bowman Exhibit 14) are necessary to create the environment for the driver to deliver milk and should be included in the cost per route day. They are directly related to selling and delivering milk and milk products, and without such supporting expenses, the selling and delivery functions could not operate effectively. The principal purpose of these expenses therefore, is to make the driver's time for selling and delivering milk as effective as possible. Before the defendant Bowman Dairy Company can earn profit, or even pay for its general administrative expenses, it must first recover these divisional expenses. The only means of recovering them is through the [fol. 913] application of drivers' time in delivering milk and performing the associated necessary elements of work and the optional customer services at customers' premises, as described in the basic manual (Bowman Exhibit 4). The recovery is limited by the number of transactions completed and the amount of merchandise which can be delivered into the store within the drivers' route time that is available for delivering milk. Therefore, since all of the divisional expenses are incurred to make the driver's time effective and are recovered through the use of his time, they bear a direct relationship to the time spent in the delivery function.

Mr. Bergfeld would further testify that the apportionment of the total cost per route day on the basis of driver's time is sound since that is the only common denominator for measuring and comparing the many factors that comprise



each customer transaction. These factors vary widely and create widely varying costs and complex costing problems. The basic manual (see pages 3, 7, and 8) details the factors, some of which are (1) distance traveled to the first customer stop, from the last customer stop, and between customers on the route, (2) volume delivered, and (3) type of delivery service rendered at a customer stop. Mr. Bergfeld would explain that the driver's time required to perform these functions is a theoretically sound and all-inclusive element to measure transactions, because time is common to all of the aforementioned factors, that it permits practical administration, and that it is predictable through time standards.

A. J. Bergfeld would further testify that he has advocated this approach for management in the milk industry. In a speech to the Milk Industry Foundation Convention at the Sheraton Plaza Hotel in Boston, Massachusetts on October 27, 1953, A. J. Bergfeld stated, in part:

"In the distribution of milk as in most other service functions, the cost of the service bears a direct relationship to the time required. Management spends money for trucks, gas, oil, tires and maintenance; base wages for routemen; operating costs for branch offices, including salaries, rent, and supplies; and for the other costs of maintaining a distribution system.

"This money is recovered when the routeman distributes his products and brings back sales revenue. The entire operation comes to a focus in this distribution function. What the money buys, actually, is a certain number of hours in which products are distributed and sales revenue returned."

35. If called to the stand for the purpose of redirect examination on behalf of the defendant Bowman Dairy Company concerning the subject of Central Office overhead, A. J. Bergfeld would testify that nearly all of that overhead which could be allocated would have to be done *on a time basis* of the Central Office personnel involved since it is comprised largely of salaries and wages, and that any other basis for allocating salaries and wages would be unsatisfactory.

He would also testify that an allocation of Central Office overhead would require several allocation steps, as explained in more detail in sub-paragraph (1) following, since few job duties are specifically related to transactions with either chain stores or independent stores.

[fol. 915] He would also testify that the amount of Central Office overhead allocated to chain store transactions and to independent store transactions, and thence to products, would have a minor effect on cost and price differentials for two principal reasons. The first is the fact that total Central Office overhead is small compared to the total expenses of those distribution divisions to which it might be allocated. In support of this, he would point out that in November, 1954, which is the period used for explanation purposes in the basic manual (Bowman Exhibit 4), the total expenses of the distribution divisions was \$1,278,078.10 (source: statements of expense, November, 1954), while the total Central Office overhead was only \$279,715.59 (source: Form #51, November, 1954). The second principal reason for Central Office overhead having only a minor effect on cost and price differentials is the fact that only a small portion of that Central Office overhead would be allocated to selling and delivery functions. In support of this, he would point out: (1) that some executives and their staffs are directly related to activities other than the sale and delivery of milk (Head Office Building Maintenance, Procurement, Research, Motor Transportation, Production, By-Product and Surplus Sales, Dry Milk Sales, and Country Distributor Sales); (2) that some executives and their staffs are partly related to the sale and delivery of milk and also to other functions (Accounting, Addressograph, Credit, Industrial Relations, Personnel, and Safety and Claim); (3) that some executives and [fol. 916] their staffs are remotely related to the sale and delivery of milk (Engineering, Executive Office Staff, Legal Department, Purchasing, and Special Duties); and (4) that only a few executives and their staffs are directly related to the sale and delivery of milk (Sales, Advertising, Public Relations, and Sales Fleet Supervision).

He would also testify that in his opinion it was proper to omit any analysis of Central Office overhead from the cost studies submitted on behalf of the Bowman Dairy Company for the following reasons:

(1) There would be three allocations of Central Office Personnel required. One is the allocation between (a) duties relating to sale and delivery of milk and (b) duties relating to other activities such as procurement of milk from farmers, management of country collection points and city bottling plants, investment opportunities, process and product development, etc. as previously described. The second allocation is of the time spent on selling and delivery activities, as to the portions applicable to store sales, retail sales, and bulk wholesale sales. The third allocation is of the time spent on selling and delivery activities for sales to stores, as to the portion applicable to chain store transactions and that applicable to independent store transactions. In each of the three allocations, the portion assigned to each function fluctuates drastically from time to time and is not susceptible to reliable prediction; hence the inability to predict the expenses which would be assigned to chain store transactions and to independent store transactions.

(2) An allocation of time spent by all central office personnel on transactions with chain stores and with independent stores would be arbitrary and could result in inequitable costing, even if each person was questioned individually.

(3) The most accurate way of determining an allocation of time spent by Central Office personnel would be to time study each person's activities, or to maintain daily records of actual time spent in performing those activities. Such a study would take a long time since nearly every Central Office job includes duties that are different from another job's duties. There is no bloc of Central Office personnel that could be studied which is representative of all duties performed by the Central Office staff. Such an allocation would be an expensive procedure for assigning a relatively small amount of money to chain store and independent store transactions. It would have been impracticable to include an allocation of these expenses in the cost studies which he has made from time to time for Bowman Dairy Company.

(4) Even if an accurate and comprehensive study of the time allocation of Central Office personnel was made, it would not be valid for future use because the [fol. 918] allocation would not be static and could not be predicted. Mr. Bergfeld believes that a strong advantage of the procedure used by defendant Bowman Dairy Company lies in its use to predict the cost differences between various customer transactions. A record of actual time or time studies of Central Office personnel varies daily and can change appreciably with a week's time, and is particularly prevalent at the supervisory and executive level.

(5) If Central Office expense could be reliably predicted, the portion allocated to selling and delivery would be reallocated among distributing divisions and the portion charged to each would be added to the route day cost. The result would be greater cost differences between deliveries to chain stores and to independent stores because the delivery minute would then be more expensive (see explanation on pages 4 and 5 of the basic manual, Bowman Exhibit 4) while the delivery time for different customers would remain unchanged.

(6) If instead of adding an allocated portion of Central Office expense to the route day cost, such expenses were allocated directly to chain store cost and to independent store cost, A. J. Bergfeld would state that in his opinion, based upon his experience in the milk industry, the Central Office cost per unit sold to chain stores would be *less* than the Central Office cost per unit sold to independent stores.

[fol. 919] 78. On or about August 29, 1955, the Jewel Food Stores, a corporate chain, changed its source of supply of dairy products in the Chicago area from The Borden Company to the Dean Milk Company.

79. On or about September 1, 1955, the Hawthorn-Melody Farms Dairy announced that its prices to independent store customers, effective September 1, 1955, for quarts, half gallons and gallons of milk respectively, would be 18 $\frac{1}{2}$ ¢.

36, and 69 cents, and that its discounts would be 2% for purchases of 25-49 points per day, 3% for purchases of 50-149 points per day, 4% for purchases of 150-249 points per day, and 5% for purchases of 250 points or more per day.

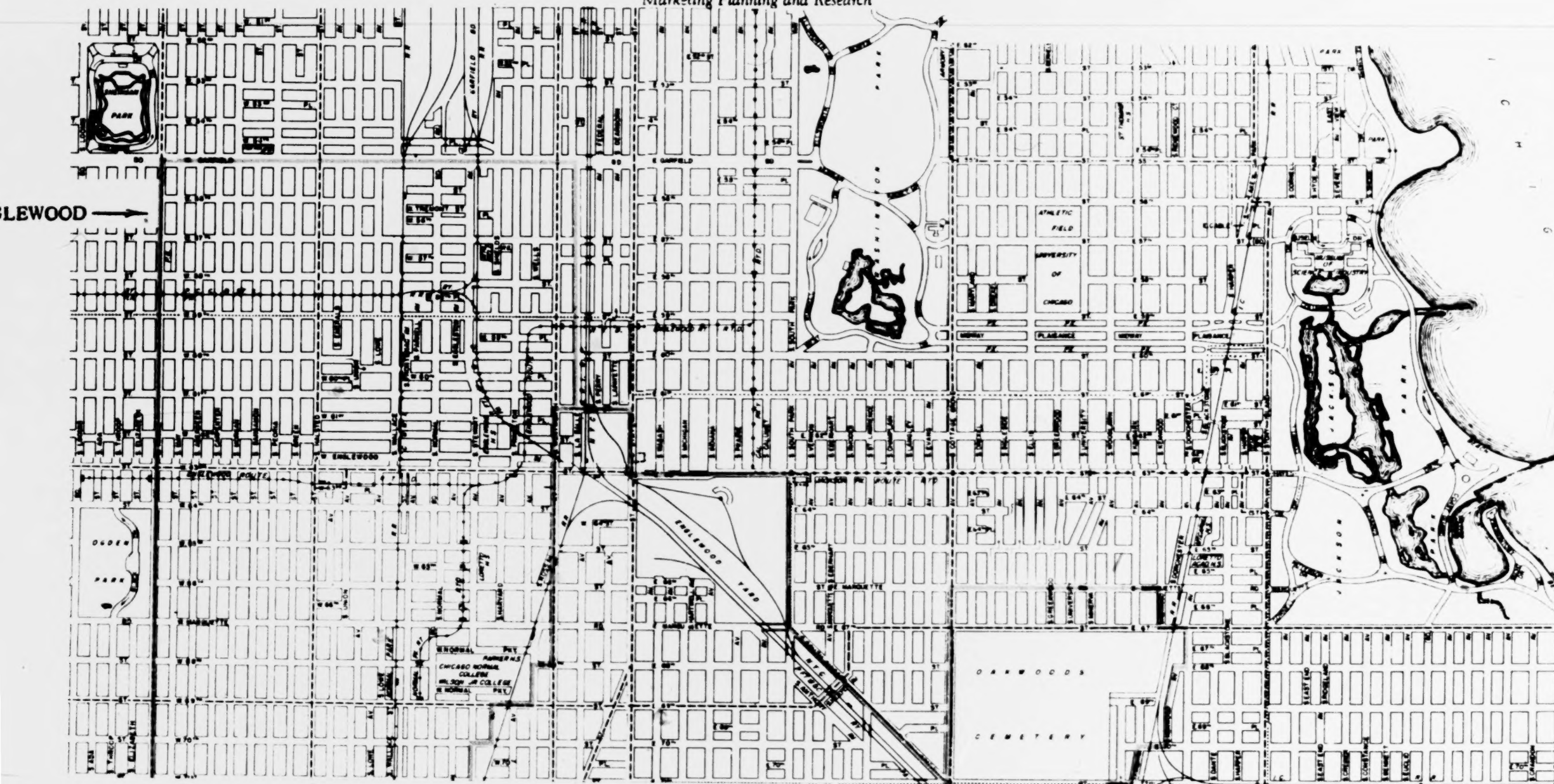
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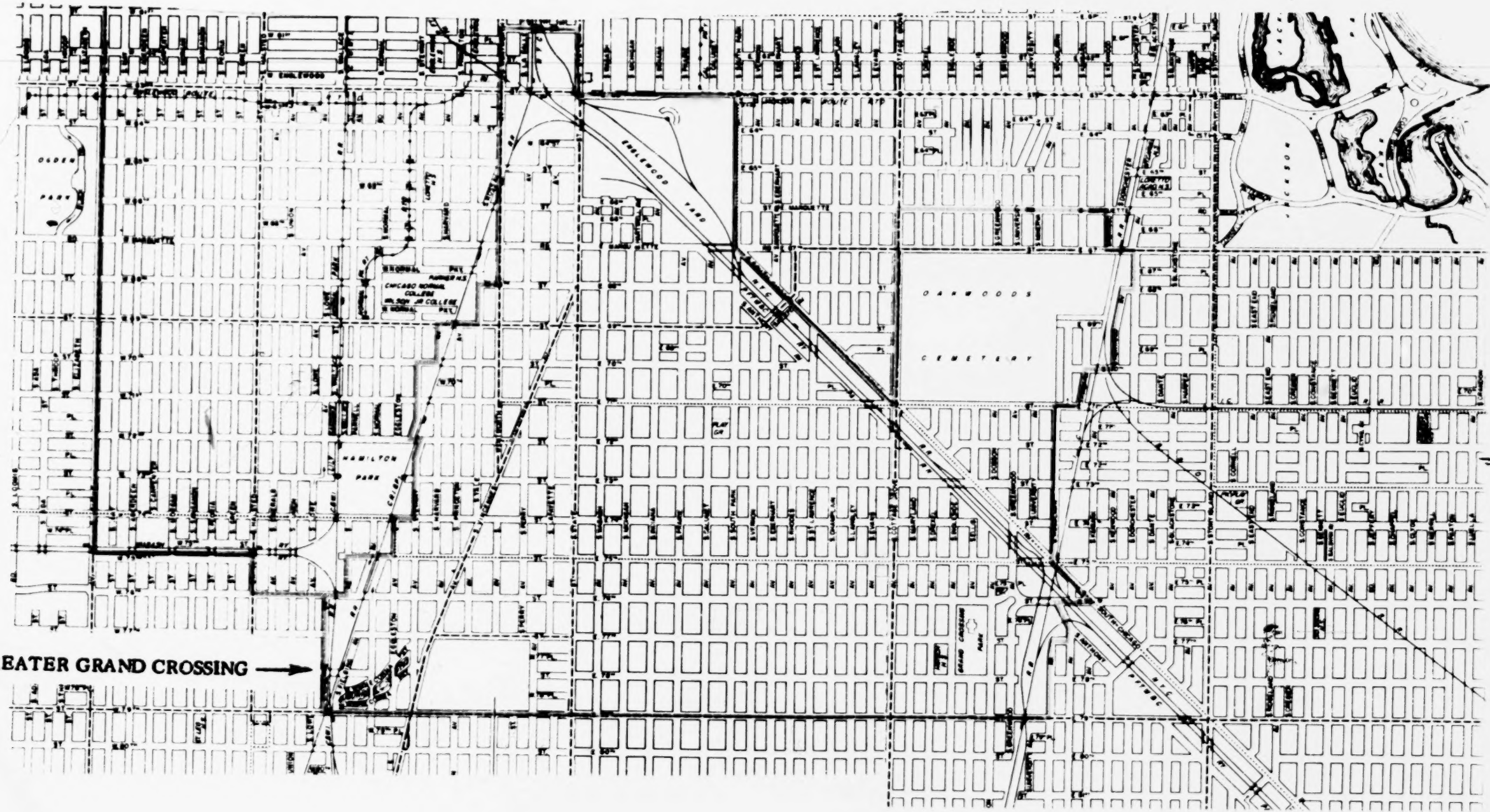
ELRICK and LAVIDGE, Inc.

Marketing Planning and Research



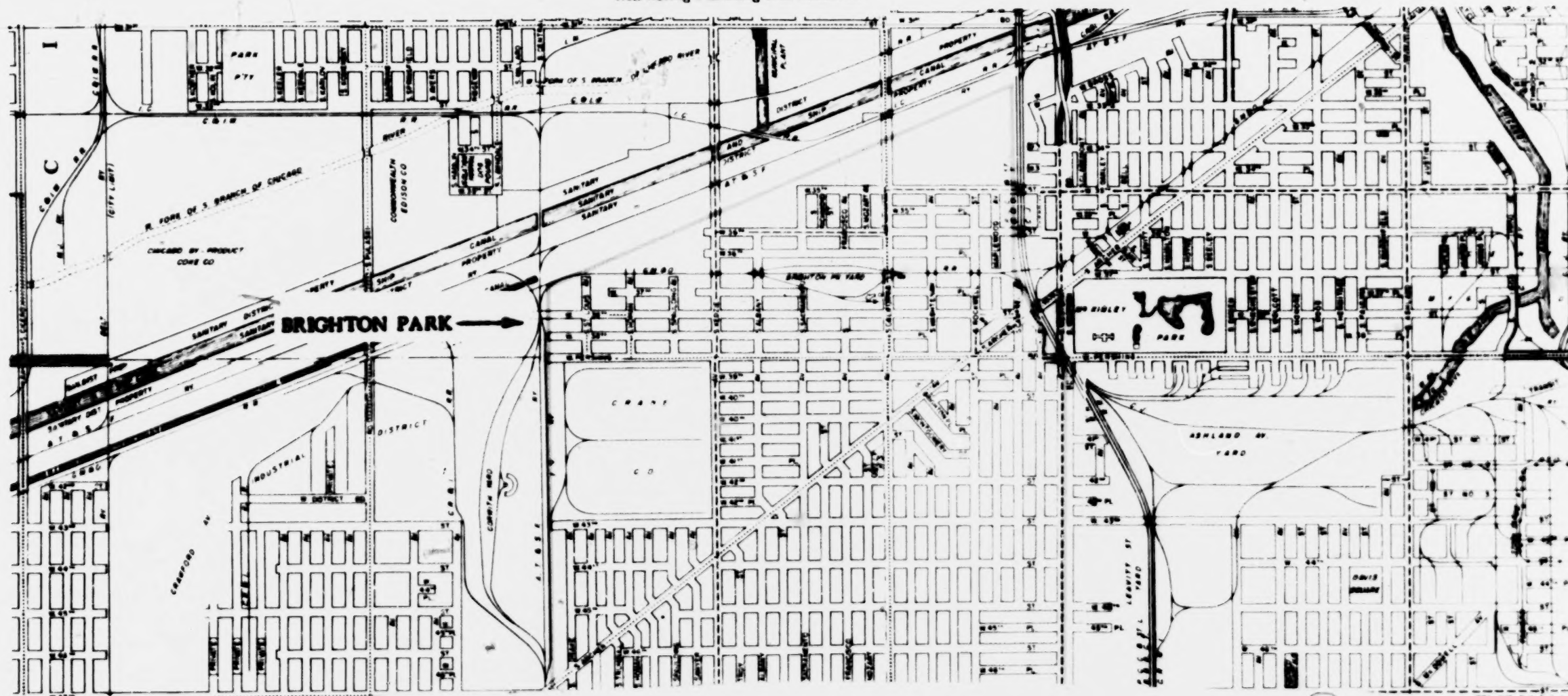


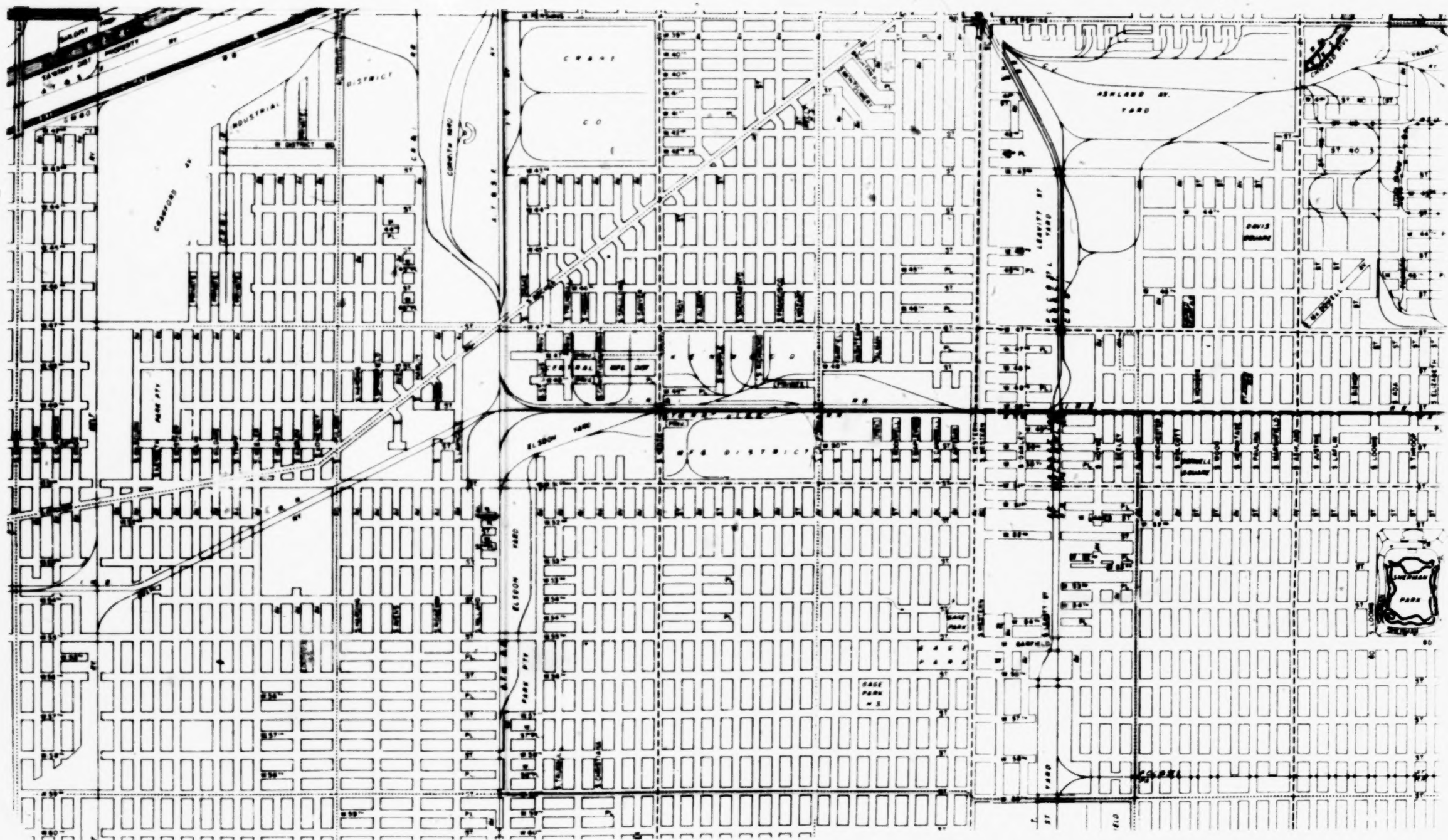
GREATER GRAND CROSSING →





Marketing Planning and Research





[fol. 923] IN UNITED STATES DISTRICT COURT

BOWMAN EXHIBIT 3

Survey of Food Store Competition  
Conducted for Rothchilds, Hart, Stevens & Barry

Chicago, Illinois

December 8, 1955

#217-1

RFE

Elrick, Lavidge and Company, Marketing Counsel  
and Research, 176 West Adams Street, Chicago 3,  
Illinois

[fol. 924] Survey of Food Store Competition

Purpose

The purpose of the survey was to measure the extent of possible customer competition, if any, between selected food stores in Chicago.

Method

Two groups of stores were used in this survey as follows:

Group A

1. Goldenstern's (Charlie's Market), 427 W. 69th, Chicago, Illinois.
2. A & P Store, 6702 Wentworth, Chicago, Illinois.
3. Kroger Store, 7260 Wentworth, Chicago, Illinois.

Group B

4. Psomakos Store, 2416 W. 47th, Chicago, Illinois.
5. A & P Store, 2601 W. 51st St., Chicago, Illinois.
6. Goldblatt's Department Store, 47th & Ashland, Chicago, Illinois.

Interviewers on the Elrick and Lavidge, Inc. resident field staff were assigned to interview all persons who could be contacted coming out of each store after shopping for groceries. Two interviewers were assigned to each store.

Interviewing was conducted on October 27, 28 and 29 and November 4 and 5, 1955.

Each person interviewed was asked a series of questions from a mimeographed questionnaire form covering their means of transportation to the store, distance from home [fol. 925] to store, whether or not respondent worked or attended school nearby and the address of same, and types of groceries purchased. In addition, persons interviewed were asked to state their street address, telephone number and name. The interviewer recorded verbatim responses on the form and indicated by observation the sex, age group and race of respondent. The time and date of each interview was recorded and the interviewer signed his or her name. A copy of this questionnaire form is included in the Appendix to this report.

At the close of each day of work, the interviewers signed a separate work completion record certifying the hours worked and interviews completed in front of each store. Copy of this form is included in the Appendix to this report.

The accuracy of the interviewing work was checked by mailing return post cards to a random selection of persons interviewed. A total of 223 cards were sent out and 96 or 43% were returned. An inspection of these returns indicated that the addresses were correct and that the persons were interviewed at the time and place recorded on each questionnaire form. See Appendix for copy of post card.

Completed questionnaires for each store were sorted and arranged by street addresses. The location of these addresses was then plotted on an enlarged reproduction of the Gorand's 1951 Edition Street Map of Chicago. Store customers from stores in Group A were plotted on Map A. Stores customers from stores in Group B were plotted on Map B.

[fol. 926] Maps A and B are separate exhibits accompanying this report.

Inspection of the plottings on these work maps A and B indicated that the great majority of customers for each store (with the exception of the Goldblatt Department Store) lived within one-quarter of a mile from the store or less. Inspection also indicated that railroads, school



grounds, etc. formed natural barriers to food store shopping.

On the basis of our observations, Maps AA and BB were prepared. Map AA shows primary trading areas and map BB shows primary and secondary trading areas for each store. These maps, AA and BB, are additional and separate exhibits accompanying this report. Plotted on these smaller size maps are the home locations of all persons interviewed residing within the primary trading areas of each store.

Map BB also shows the home locations within the secondary trading areas.

A statistical summary showing the number of interviews completed and the location of the customers is included on the following pages.

[fol. 927]

#### Store Trading Areas

##### Map "A"

| Customers Within  | Store #1<br>Goldenstern's | Store #2<br>A & P | Store #3<br>Kroger |
|---|---------------------------|-------------------|--------------------|
| Primary trading area<br>(within $\frac{1}{4}$ mile) . . . . .         | 161 93%                   | 77 88%            | 213 83%            |
| Outside primary trading area<br>(within $\frac{1}{4}$ mile) . . . . . | 1 *                       | -                 | -                  |
| $\frac{1}{4}$ to $\frac{1}{2}$ mile area . . . . .                    | 8 5                       | 6 7               | 21 8               |
| $\frac{1}{2}$ to $\frac{3}{4}$ mile area . . . . .                    | 3 2                       | 2 2               | 4 2                |
| Over $\frac{3}{4}$ mile area . . . . .                                | 1 *                       | 3 3               | 19 7               |
| Total customers . . . . .   | 174 100%                  | 88 100%           | 257 100%           |

##### Map "B"

| Customers Within  | Store #4<br>Psomakos | Store #5<br>A & P | Store #6<br>Goldblatt's |
|---|----------------------|-------------------|-------------------------|
| Primary trading area<br>(within $\frac{1}{4}$ mile) . . . . .         | 204 79%              | 344 85%           | 35 12%                  |
| Outside primary trading area<br>(within $\frac{1}{4}$ mile) . . . . . | -                    | -                 | -                       |
| $\frac{1}{4}$ to $\frac{1}{2}$ mile area . . . . .                    | 24 9                 | 43 11             | 75 27                   |
| $\frac{1}{2}$ to $\frac{3}{4}$ mile area . . . . .                    | 11 4                 | 1 *               | 26 9                    |
| Over $\frac{3}{4}$ mile area . . . . .                                | 20 8                 | 18 4              | 145 52                  |
| Total customers . . . . .   | 259 100%             | 406 100%          | 281 100%                |

\*Less than 1%

[fol. 928]

Store Customers  
From Each Primary Trading Area\*\*

## Map "A"

|                            | Store #1<br>Goldensters's |      | Store #2<br>A & P |      | Store #3<br>Kroger |      |
|----------------------------|---------------------------|------|-------------------|------|--------------------|------|
| #1 Primary Trading Area    |                           |      |                   |      |                    |      |
| Total store customers..... | 174                       | 100% | 88                | 100% | 257                | 100% |
| Within #1 area.....        | 161                       | 93%  | 0                 | -    | 0                  | -    |
| #2 Primary Trading Area    |                           |      |                   |      |                    |      |
| Total store customers..... | 174                       | 100% | 88                | 100% | 257                | 100% |
| Within #2 area.....        | 1                         | *    | 77                | 88%  | 3                  | 1%   |
| #3 Primary Trading Area    |                           |      |                   |      |                    |      |
| Total store customers..... | 174                       | 100% | 88                | 100% | 257                | 100% |
| Within #3 area.....        | 0                         | -    | 1                 | 1%   | 213                | 83%  |

## Map "B"

|                            | Store #4<br>Psomakos |      | Store #5<br>A & P |      | Store #6<br>Goldblatt's |      |
|----------------------------|----------------------|------|-------------------|------|-------------------------|------|
| #4 Primary Trading Area    |                      |      |                   |      |                         |      |
| Total store customers..... | 259                  | 100% | 406               | 100% | 281                     | 100% |
| Within #4 area.....        | 204                  | 79%  | 2                 | *    | 4                       | 1%   |
| #5 Primary Trading Area    |                      |      |                   |      |                         |      |
| Total store customers..... | 259                  | 100% | 406               | 100% | 281                     | 100% |
| Within #5 area.....        | 0                    | -    | 344               | 85%  | 3                       | 1%   |
| #6 Primary Trading Area    |                      |      |                   |      |                         |      |
| Total store customers..... | 259                  | 100% | 406               | 100% | 281                     | 100% |
| Within #6 area.....        | 0                    | -    | 0                 | -    | 35                      | 12%  |

\*Less than 1%

\*\*Persons interviewed at Store #1, 2, 3, 4, 5 and 6 who live within primary trading area designated.

[fol. 929]

Store Customers  
From Each Secondary Trading Area\*\*

## Map "B"

|                            | Store #4<br>Psomakos |      | Store #5<br>A & P |      | Store #6<br>Goldblatt's |      |
|----------------------------|----------------------|------|-------------------|------|-------------------------|------|
| #4 Secondary Trading Area  |                      |      |                   |      |                         |      |
| Total store customers..... | 259                  | 100% | 406               | 100% | 281                     | 100% |
| Within #4 area.....        | 24                   | 9%   | 0                 | -    | 10                      | 4%   |
| #5 Secondary Trading Area  |                      |      |                   |      |                         |      |
| Total store customers..... | 259                  | 100% | 406               | 100% | 281                     | 100% |
| Within #5 area.....        | 2                    | *    | 43                | 11%  | 4                       | 1%   |
| #6 Secondary Trading Area  |                      |      |                   |      |                         |      |
| Total store customers..... | 259                  | 100% | 406               | 100% | 281                     | 100% |
| Within #6 area.....        | 2                    | *    | 0                 | -    | 75                      | 27%  |

\*Less than 1%

\*\*Persons interviewed at Stores #4, 5 and 6 who live within secondary trading area designated.

[ fol. 930 ]

## APPENDIX

[ fol. 931 ]

Elrick and Lavidge, Inc. 176 W. Adams, Chicago 3 Phone: Financial 6 5555  
 Project #217-1 October, 1955 # \_\_\_\_\_

## Transportation—Shopping Survey

1. We are making a survey of what means of transportation people use to go shopping for groceries. How did you get here today?

Walk ( )  
 Auto ( )  
 Bus-St. Car ( )  
 Other ( )

- 2a. How far do you live from here? \_\_\_\_\_ blocks

- b. Do you work or go to school near here? Yes ( ) No ( )

- c. Where? \_\_\_\_\_

3. What types of groceries did you buy today?

|                               |                     |
|-------------------------------|---------------------|
| Canned and Packaged Foods ( ) | Dairy Products ( )  |
| Frozen Foods ( )              | Bakery Products ( ) |
| Meats ( )                     | Drug Items ( )      |
| Produce ( )                   | Household Goods ( ) |

- 4a. What is your home address?

\_\_\_\_\_

- b. Telephone Number \_\_\_\_\_

- c. Name of Respondent \_\_\_\_\_

Male ( ) Female ( ) Under 18 ( ) 18-25 ( ) 26-50 ( ) 50 ( ) Over

White ( ) Negro ( ) Other ( ) Date \_\_\_\_\_, 1955

Time \_\_\_\_\_ a.m.  
 \_\_\_\_\_ p.m.

Interviewer's Signature \_\_\_\_\_

Edited \_\_\_\_\_ Coded \_\_\_\_\_

[fol. 932]

Miss Shirley Sandkam  
Elrick and Lavidge, Inc.  
176 W. Adams Street  
Chicago 3, Illinois

Dear Respondent :

We very much appreciate your fine cooperation with our recent Transportation—Shopping Survey.

So that we can be sure that we have the right information, we must check the answer to one of the questions which you were asked.

You were interviewed the other day in front of the ——— I'll appreciate it a great deal if you will fill in the answer to the question on the attached card, tear off that card and put it in a mail box. It already has a stamp and is addressed to me. Thanks again for your help.

Cordially, Shirley Sandkam.

## Transportation—Shopping Survey

Here is the question:

How did you get to the store that day?

Walk ( )

Auto ( )

Bus—St. Car ( )

Other ( )

Name —, —.

Address —, —.



[fol. 933] Elrick and Lavidge, Inc.  
Marketing Planning and Research  
Chicago 3, Illinois

176 W. Adams Street Telephone FI nancial 6-5555

Date —, 1955.

This is to certify that on this date, between the hours of  
a.m. — a.m. — a.m.  
— p.m. and — p.m. and also between the hours of — p.m. and  
a.m.,  
— p.m., I personally interviewed all available persons 18  
years of age and older who appeared to have made a grocery  
item purchase at

Store Name \_\_\_\_\_

Address \_\_\_\_\_

City, Chicago State, Illinois.

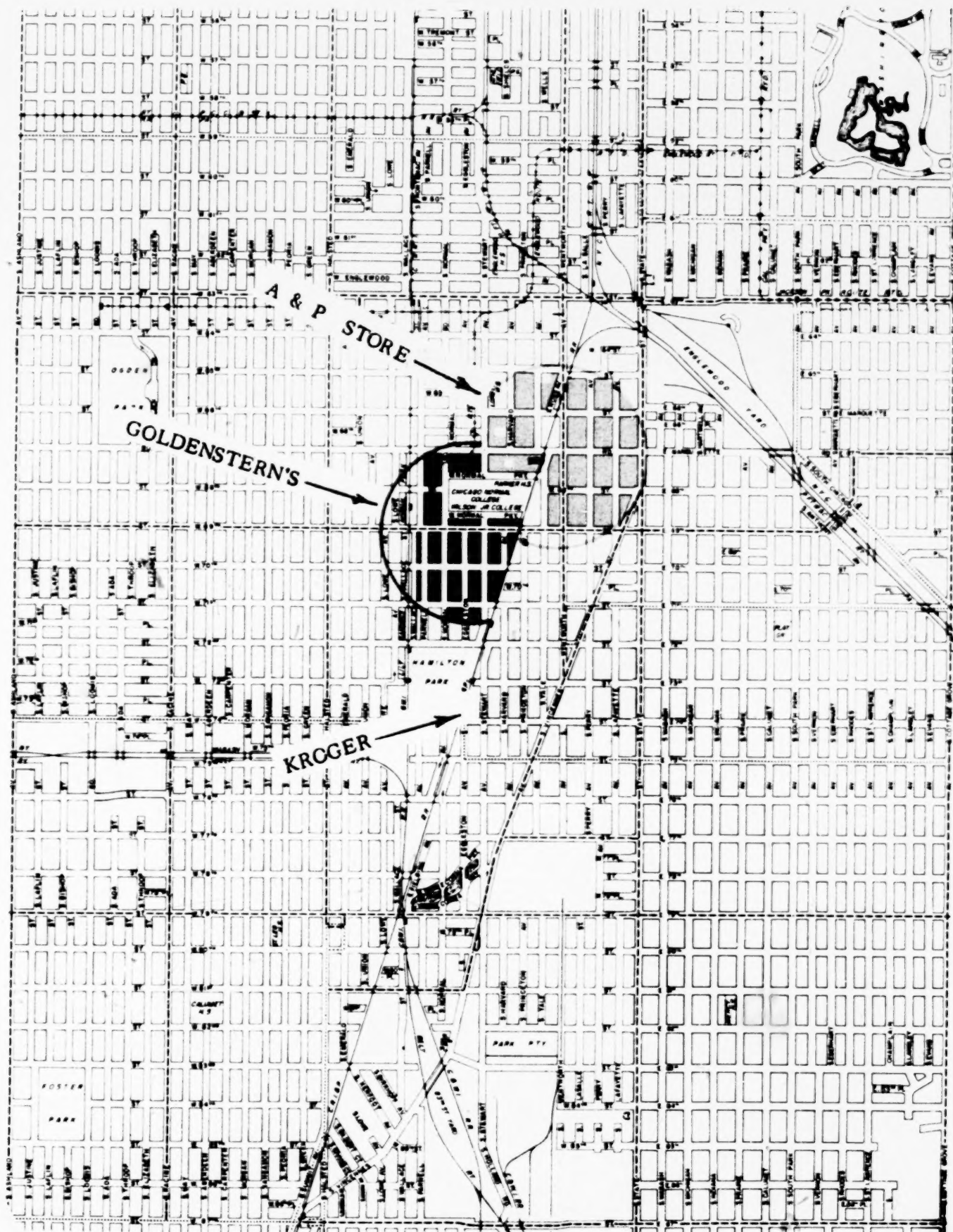
Attached are — individual interview forms completed  
by me on this date.

Interviewer \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_

Telephone \_\_\_\_\_



**ELRICK and LAVIDGE, Inc.**

[fol. 935a] [File endorsement omitted]

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[fol. 936] IN UNITED STATES DISTRICT COURT

**BOWMAN EXHIBIT No. 4**

**Manual for Establishing and Testing a Store Discount  
Schedule**

**Foreword**

This manual reviews the considerations that directed the formulation of Bowman Dairy's resale store discount schedule, and illustrates procedures for testing it with current cost data.

The principles and method used throughout are intended to devise a balanced discount schedule which will return an equitable discount to all customers. It is good business policy to have a schedule which is fair to each store owner. In the long run, unbalanced net prices, where some customers are overcharged to absorb the low return from others who are undercharged, can only result in a lower sales volume. The overcharged customers will soon be vulnerable to the offers of other distributors. Subsequent price increases to the remaining business in an effort to counterbalance the other losses will create dissatisfaction among that group, and prompt some to contact other dealers.

The plan established in this manual should minimize charges of unfairness, because the net prices reflect the cost of a product delivered at the store.

[fol. 937] Differences in net prices are warranted by differences in costs resulting from combinations of volume purchased and delivery services rendered by the Bowman driver. Rather than determine discounts to store customers by pre-guessing these combinations, they are determined by after-the-fact calculations based on actual quantities purchased by each store. Therefore, the customer's net price is the result of:

- a. Billing based on list prices for merchandise received, at the time of the transaction, and,

- b. a discount rebated at the end of each month for the combinations of volumes purchased and regular services received during that month.

The last section of the manual details a method of testing the schedule. This procedure remains valid regardless of changes in prices, costs, and discounts.

[fol. 938]

## Section I

[fol. 939] I. Delivery Services and Route Costs

Facts indicate that the cost of a product, uniform in chemical and physical properties, and in similar containers, is the same up to the time it is loaded on a truck ready for delivery, regardless of the type of store receiving it. Cost differences of the delivered product are created during delivery, and any elements of cost occurring prior to this operation are not considered in this manual.

Delivery is a complex function, principally due to the wide variations in quantity delivered and services performed at each store. However, when this information and the time to make the delivery are known, cost differences can be calculated.

How are these differences created? Once the driver arrives at a customer stop, there are some necessary work elements that he must perform. Beyond this, there are some optional delivery services that the driver may be requested to do, such as deliver the order inside, place the containers in a refrigerator, rearrange containers so that any product remaining unsold from yesterday will be sold first today, leave cases of products at different spots in the store, etc. The type of service performed varies greatly, [fol. 940] as does also the extent of the service requested. Very few stores are rendered exactly the same service, but yet this extensive pool of services must be available for all to draw upon. In addition, most store customers pay the driver in cash daily, rather than paying by check monthly or semi-monthly.

The delivery function is further complicated by the fact that the time required for some of these elements is relatively "constant" in that the performance time is unaffected by volume delivered. Other elements are variable



because their performance time is directly affected by volume. Others are a mixture of these characteristics, having a constant portion and a variable portion.

The following table shows examples of these elements, grouping them by "necessary" and "optional," and also indicating their relationship to volume.

The same explanation is shown in graphical form in Schedule 1.

[fol. 941]

Table of Work Elements

| Element Name   | Characteristic |
|--|----------------|
| 1. Necessary work elements   |                |
| a. Get order, and a delay to get order                               | Constant       |
| b. Select merchandise  | Mixed          |
| c. Unload order from truck   | Variable       |
| d. Deliver order to store  | Mixed          |
| e. Make out delivery slip and have the slip checked                  | Constant       |
| f. Route bookkeeping   | Constant       |
| g. Sort glass bottles (if customer takes glass containers)           | Variable       |
| h. Pick up empties and load empties on truck                         | Mixed          |
| i. Arrange load  | Variable       |
| j. Drive on route, between customers                                 | Constant       |
| k. Load cases on truck at plant and unload cases from truck at plant | Variable       |
| 2. Optional customer services  |                |
| a. Delivery services beyond a sidewalk drop                          | Variable       |
| b. Collect cash and delay to collect cash                            | Constant       |

[fol. 942] Due to varying combinations of order quantities purchased by each store owner and the mixture of necessary and optional services performed for him, the driver's time at each store is different. As Bowman incurs a cost during delivery operations due to the time that its driver and equipment are used, the company can determine the cost to deliver if it knows the time to deliver.

To convert time to cost those expenses incurred by the dairy's distributing division must also be known. This includes the driver's wages, truck expenses, division administrative and clerical expenses, and other overhead expenses at the division. They do not include expenses at the company's central office, although they are in part incurred in the administration of the distribution system. Some central office expenses could properly be charged to distribution, but in the interests of conservative costing they are omitted. There is also the possibility that the allocation of expenses might be inaccurate and thereby cause some inequities in determining delivery costs.

The direct expense at the Elston Division (a store division), for example, during November, 1954 was \$84,657.55 for 1507 route days, or \$56.18 per route per day. (1) This daily expense should be charged only to the time spent in [fol. 943] serving customers. The remainder of the day is preparatory and not directly employed in delivering milk.

An analysis of a driver's time during a day might be the following example:

|   | Make Ready<br>and Personal<br>Time | Minutes | Time for<br>Customer<br>Services |
|---|------------------------------------|---------|----------------------------------|
| Get and garage truck .....                | 5 2                                |         |                                  |
| Prepare for delivery .....                | 11 6                               |         |                                  |
| Drive to and from route .....             | 23 4                               |         |                                  |
| Time serving customers .....              |                                    |         | 347 6                            |
| Delivery services to stores .....         |                                    |         | 69 7                             |
| Drive between stores .....                | 50 8                               |         |                                  |
| Office bookkeeping and turn in cash ..... | 43 7                               |         |                                  |
| Miscellaneous and personal time .....     |                                    |         |                                  |
|   | 134 7                              |         | 417 3                            |
| Total time .....                          |                                    | 552 0   |                                  |

The cost of providing service on this route is 13<sup>1</sup>/<sub>2</sub>¢ per customer service minute (\$56.18/417.3 minutes.)

All routes do not have the same amount of time available for serving customers, and the several distributing divisions do not incur the same total expenses; consequently, the cost rate per minute varies from route to route.

[fol. 944] The combinations of varying cost rates, order quantities, and delivery services, were considered in the careful preparation and analysis of cost data to formulate an equitable discount plan.

To derive the plan, delivery costs at various volume levels are calculated for those customers receiving the same general type of service. The sum of delivery cost and product platform cost is subtracted from list price. When there is a margin remaining after subtracting these costs, it is available for administrative expenses, taxes, company profit, and a discount that can be rebated to the store customer.

Details of these calculations are shown in the following sections of this report.

[fol. 945]

## Section II

[fol. 946] II. Classification of Store Services and Their Time Measurement

In the preceding section, the Table of Work Elements listed those which are necessary to every delivery. If a driver stops at a store and delivers any merchandise at all, each of the elements in this category is included. Up to this point, all stores are equal in that they all receive these services; but beyond this point there is a variation. Nearly all stores require the optional delivery services and daily cash payment and therefore have the most expensive type of delivery. A relatively few number of stores require only the necessary work elements and, consequently, have the cheapest type of delivery.

Experience has shown that the independently-owned stores generally want the optional services which may include some of the following work elements: (2)

- Deliver to the rear of the store.

- Leave some merchandise at a refrigerated showcase and deliver remainder of the order to a storeroom.

- Rearrange merchandise in showcase so that the earliest dated containers are sold first.

- Check showcase as to quantity of merchandise remaining from previous delivery and advise store owner.

[fol. 947] Remove containers from Bowman's wooden cases and place on shelves in walk-in cooler or arrange in refrigerated showcase.

- Advise and assist owner in arranging dairy products' display.

- Call back later in the day to deliver more merchandise if the refrigerated equipment cannot accommodate the entire order at once.

- Drive additional distance if store owner requires delivery at a specified time and disrupts regular route schedule.

- Receive daily cash payment for quantity delivered.

- Cash checks for store owner, etc.



Of course, these requests vary widely and there is no standard set of options, but any movement of merchandise beyond a point just inside the store door is considered additional service. It is mutually understood that the driver's time is available for rendering that service, and the corresponding cost of providing it is calculated as part of the delivery cost to this general type of store.

On the other hand, the limited service of floor delivery and central billing on a credit basis is part of the arrangement made with the corporate chains in arriving at their net prices, and they do not expect services beyond a floor delivery. (3) As a result, time spent for additional service is unavailable to chain outlets and is omitted from the delivery charge.

[fol. 948] As previously noted, the availability of a route driver's time and use of companion equipment is Bowman Dairy's cost in distributing its products, and, if the delivery time is known, the delivery cost can be calculated.

Acceptable time standards are the first requisite in establishing accurate delivery costs as the basis for pricing. Standards were derived by conducting time studies for deliveries in Elston, Forest, Englewood, and South Divisions, with the bulk of the study in Elston. There were 55 time studies taken on 32 Elston store routes from which standard time allowances were developed. As route foremen are familiar with normal methods and sequence of operations required to make deliveries to stores, several were selected and trained in the procedure of recording time observations. The selection of standard time allowances from the accumulation of recorded time data followed accepted techniques. Details of this work are shown in Appendices A and B.

Therefore, at this point the standard time to perform the various work elements involved in delivery operations was known and the services and elements were classified as follows:

[fol. 949] 1. Service requirements

1.1 Necessary services

1.2 Optional services

2. Characteristic of work element
  - 2.1 Constant element
  - 2.2 Variable element
  - 2.3 Mixed element
3. Service classification by type of store
  - 3.1 Independently-owned stores—necessary plus optional services
  - 3.2 Corporate-chain outlets—necessary services only

The delivery-cost calculations, which are the bases of a discount schedule, are explained in Section III.

[fol. 950]

### Section III

[fol. 951] III. Establishing the Discount Schedule

The calculations in Schedules 2 and 2A demonstrate the method of establishing an equitable discount schedule to stores. The intention of this procedure is to establish a schedule which is balanced and therefore returns an equitable discount to each customer. To ensure fair net prices, the increases in discounts should be accounted for by savings in cost. In this manner we minimize the danger that customers paying a higher price are compensating for the dairy's low return on transactions with customers paying a lower price.

This has been accomplished for independent stores by the following procedure:

1. Apply delivery time standards to customer service requirements at various volume levels.
2. Determine a cost rate per route minute as shown previously; a representative 15c per minute used in this example.
3. Apply the cost rate to total delivery time at various volume levels.
4. Calculate unit delivery cost at those volume levels.
5. Add the platform cost, 14c in this example, to the delivery cost for services rendered, at those volume levels.

[fol. 952] 6. Subtract the total unit cost from list price, 20½¢ in this example. Where price exceeds cost, there is a margin available, part of which can be distributed to customers in the form of a rebated discount. Express this difference as a percentage of list price. These results are shown in tabular and graphical form in Schedules 2, 3, and 4.

The discount curve in Schedule 4 is the maximum discount that could be granted to independents. For simpler administration of a routine procedure, the curve shape is approximated either by a series of steps or by a series of joined lines. The latter method appears to be more logical because customers buying any greater volume are allowed a greater discount.

It is obvious that the company cannot grant the entire margin represented by this line, since there must be a remainder after discount, for administrative expenses, taxes, profit, etc. In deciding how much of the available margin should be rebated, a family of curve approximations is drawn below the maximum. When the decision was made regarding what portion of the profit margin to rebate, values along that line were published as the discount schedule.

The most recent approximation of the maximum discount curve is the store discount schedule of August 25, 1954; it is shown in graphical form in Schedule 5.

[fol. 953] The same method of calculation is used to establish the maximum available margin for the chain stores, but the following elements are not included in the regular services and are omitted from the total delivery times (see Schedule 2A).

Customer Service  
Collect  
Delay to Collect

Due to the omission of these elements, the maximum margin available to chain stores is greater than that available to independents or to any other group of stores requiring the extensive delivery services.

With maximum available margin determined for chain stores or other limited service groups, the lower line which will represent a portion of this margin to be rebated as

discount, should bear a cost relationship to that already established for the independent stores. The line has been established so that Bowman does not make a smaller gross margin (available for administrative expenses, depreciation, taxes, profit, etc.) on sales to a customer receiving a lower net price than the margin enjoyed from a customer receiving a higher net price. In this way, the greater discount reflects only cost savings attributable to high volume purchases and/or fewer delivery services.

[fol. 954] To illustrate the point, suppose that the discount line established for customers receiving all services (independent stores) is the 50% line on Schedule 4. Then, data in Schedules 2A and 4 for a daily volume of 200 points is as follows:

|                                      |        |
|--------------------------------------|--------|
| Maximum available margin—            |        |
| independent store                    | 19.56% |
| Less: Rebated discount (50% line)    | 10.00% |
| Gross Margin                         | 9.56%  |
| Maximum available margin—chain store | 22.49% |
| Less: Gross margin—independent store | 9.56%  |
| Maximum discount                     | 12.93% |

As a result of this transaction at a 200 point volume, Bowman's discount to the chain store could be justified by its costs, provided the gross margin after discount exceeded 9.56%. Since the minimum gross margin determines the maximum discount, Bowman could not rebate more than 12.93% to the chain.

This type of calculation at all volume levels, establishes a Minimum Profit Maximum Discount line for the chain stores (see Schedules 2A and 4A). The lower priced customer need not be rebated as high a discount as this line allows, but the average actual discount should not exceed the average allowable discount. In actual practice, the discount to corporate chains has been represented by a horizontal line which is less than the average maximum amount allowed to them.

[fol. 955]

## Section IV

[fol. 956] IV. Testing the Discount Schedule

Cost differentials of the delivered product occur during delivery and the test concerns only that phase of the operations; but as the mixture of products purchased by a store customer affects the total cost of a day's order delivered to him, this is also taken into consideration in testing the schedule.

It is industry practice to speak of purchase quantities in point values. Some sales control reports use points for measuring sales volume, discount schedules are based on points, and administration of delivery routes makes use of point valuations. Generally speaking, it is a means of relating a mixture of products to a common basis. A quart of milk is one point, while a gallon of milk is four points. We also find that a quart of milk, a quart of buttermilk, and a pint of Half and Half cream are each evaluated at a point, although their wholesale and retail prices differ and their platform costs (cost of a product ready to be delivered) differ. As a result, two customers buying the same point volume, may not receive the same merchandise or dollar volume, may not receive the same number of containers, and may have orders which total to different platform costs.

[fol. 957] To include the variations created by different mixtures of products, the schedule is tested by using prices, platform costs, and delivery costs for the total product volume and mix purchased by each customer.

The test which follows was made on Route #1177, Elston Division. All variations in volume and service during a week's time, were included by using all deliveries during the entire week of November 15-20, 1954 as the basis for test.

A detailed illustration of testing is shown for one of the customers, Mr. S. Livas, a relatively large-volume independent. During the week, Mr. Livas had six deliveries and purchased the following quantities: (4)

| Product & Container<br>(G) Glass<br>(F) Fiber |     | No. of<br>Units | No. of<br>Cases |
|---|-----|-----------------|-----------------|
| $\frac{1}{2}$ gallon—Milk                     | (F) | 104             | 8 67            |
| Quart—Milk                                    | (F) | 264             | 11 00           |
| Quart—Sta-Slim                                | (F) | 22              | 0 92            |
| Pint—Half & Half Cream                        | (F) | 105             | 3 00            |
| $\frac{1}{2}$ pint—Cream                      | (F) | 3               | 0 05            |
| $\frac{1}{2}$ pint—Whipping Cream             | (F) | 9               | 0 15            |
| Quart—Buttermilk                              | (F) | 13              | 0 54            |
| Pint—Sour Cream                               | (F) | 1               | 0 04            |
| $\frac{1}{2}$ pint—Sour Cream                 | (F) | 1               | 0 02            |
| Whip Dispenser                                | (F) | 7               | 0 41            |
| Cheese Containers                             | (F) | 13              | 1 19            |
| Quart—Dari-Rich                               | (G) | 7               | 0 58            |
| Quart—Egg-Nog                                 | (G) | 5               | 0 42            |
| $\frac{1}{2}$ pint—Yogurt                     | (G) | 12              | 0 50            |
| Gallon—Milk                                   | (G) | 60              | 15 00           |
| $\frac{1}{2}$ gallon—Milk                     | (G) | 25              | 1 17            |
| Pound—Butter                                  |     | 60              | 2 88            |
| Dozen—Eggs                                    |     | 10              | 0 42            |
| Totals  |     | 760             | 49 65           |

[fol. 958] Mr. Livas receives both the necessary and optional groups of services, and in addition pays his bill daily by cash. The standard time allowances for this week's deliveries are shown in the following table:

Delivery Time for Mr. Livas' Deliveries  
(November 15-20, 1954)

| Work Element                     | Calculation                             | Standard<br>Time |
|----------------------------------|---|------------------|
| Get order                        | $6 \times 1.37$                         | 8 22             |
| Delay to get order               | $6 \times 0.11$                         | 0 66             |
| Select merchandise               | $(6 \times 1.13) + (43.65 \times .48)$  | 27 73            |
| Unload order                     | $49.65 \times 0.092$                    | 4 57             |
| Deliver                          | $(6 \times .795) + (43.65 \times .295)$ | 17 65            |
| Make out delivery slip           | $6 \times 2.14$                         | 12 84            |
| Have delivery slip checked       | $6 \times 0.19$                         | 1 14             |
| Route bookkeeping                | $6 \times 0.63$                         | 3 78             |
| Sort glass bottles               | $109 \times 0.025$                      | 2 73             |
| Pick up empties                  | $(6 \times 0.43) + (43.65 \times .23)$  | 12 62            |
| Load empties on truck            | $49.65 \times 0.109$                    | 5 41             |
| Arrange load                     | $49.65 \times 0.377$                    | 18 72            |
| *Drive on route                  | $6 \times 3.92$                         | 23 52            |
| Load cases on truck at plant     | $49.65 \times 0.143$                    | 7 10             |
| Unload cases from truck at plant | $49.65 \times 0.20$                     | 9 93             |
| Customer services                | $760 \times 0.033$                      | 25 08            |
| Collect                          | $6 \times 1.19$                         | 7 14             |
| Delay to collect                 | $6 \times 0.13$                         | 0 78             |
| Total Standard Time (minutes)    |   | 189 62           |

\* 10 stops  $\div$  8.0 miles on route = 1.25 stops per mile  
 4.9 minutes per mile (see graph, Appendix A)  $\times$  8.0 miles = 39.2 minutes  
 39.2 minutes  $\div$  10 customers = 3.92 minutes per customer.

[fol. 959] During the same week, an A & P chain store outlet on Route #1177, had six deliveries and had purchase orders which totaled 4539 units and 289.13 cases. (5)

This outlet required only the necessary delivery services. By applying the time standards in the same manner as for the deliveries to Mr. Livas, excluding time required for customer services, collect, and delay to collect, the total time for volume delivered and services rendered was 609.30 minutes.

**Delivery Time for A & P Deliveries**  
(November 15-20, 1954)

| Work Element                         | Calculation                              | Standard Time |
|--------------------------------------|--|---------------|
| Get order                            | $6 \times 1.37$                          | 8.22          |
| Delay to get order                   | $6 \times 0.11$                          | 0.66          |
| Select merchandise                   | $(6 \times 1.13) + (275.63 \times .48)$  | 139.08        |
| Unload order                         | $281.63 \times 0.092$                    | 25.91         |
| Deliver                              | $(6 \times 7.95) + (275.63 \times .295)$ | 86.08         |
| Make out delivery slip               | $6 \times 2.14$                          | 12.84         |
| Have delivery slip checked           | $6 \times 0.19$                          | 1.14          |
| Route bookkeeping                    | $6 \times 0.63$                          | 3.78          |
| Sort glass bottles                   | $345 \times 0.025$                       | 8.63          |
| Pick up empties                      | $(6 \times 0.43) + (275.63 \times .23)$  | 65.97         |
| Load empties on truck                | $281.63 \times 0.109$                    | 30.70         |
| Arrange load                         | $281.63 \times 0.377$                    | 106.17        |
| *Drive on route                      | $6 \times 3.92$                          | 23.52         |
| Load cases on truck at plant         | $281.63 \times 0.143$                    | 40.27         |
| Unload cases from truck at plant     | $281.63 \times 0.20$                     | 56.33         |
| <b>Total Standard Time (minutes)</b> |  | <b>609.30</b> |

\*  $10 \text{ stops} \div 8.0 \text{ miles on route} = 1.25 \text{ stops per mile}$   
 $4.9 \text{ minutes per mile (see graph, Appendix A)} \times 8.0 \text{ miles} = 39.2 \text{ min.}$   
 $39.2 \text{ minutes} \div 10 \text{ customers} = 3.92 \text{ minutes per customer.}$

[fol. 960] Following the same calculations for every stop on the route results in the following:

| Route #1177<br>Customer              | Total<br>Units | Total<br>Cases | Total<br>Delivery<br>Time |
|--------------------------------------|----------------|----------------|---------------------------|
| S. Livas                             | 760            | 49.65          | 189.62                    |
| J. Mandela                           | 430            | 24.13          | 127.79                    |
| J. Rammer                            | 107            | 4.83           | 80.19                     |
| J. Lohan                             | 728            | 47.08          | 182.75                    |
| H. Heuer                             | 408            | 23.22          | 125.62                    |
| A & P                                | 4,539          | 289.13         | 609.30                    |
| M. Musso                             | 179            | 12.26          | 96.23                     |
| G. Kruse                             | 371            | 21.92          | 121.37                    |
| T. Frigo                             | 610            | 45.47          | 177.33                    |
| D. George                            | 148            | 13.66          | 98.45                     |
| <b>Total Delivery Time (minutes)</b> |                |                | <b>1,808.65</b>           |



During November, 1954, it cost \$56.18 per route per day to provide service at Elston (see Schedule 6). For Route #1177, the cost per customer service minute was \$0.1864 ( $\$56.18 \times 6 = 1808.65$ ).

Before determining total delivery cost, recognition is given to the fact that butter, eggs, and bulk products are excluded from a customer's point volume in selecting the discount rate, and from the dollar volume in applying the discount rate. The variable portion of delivery time is [fol. 961] revised to exclude the effect of those three items and then extended by \$0.1864 per minute to determine total delivery cost. The sum of delivery cost, discount paid, and platform cost of all items (excluding butter, eggs, and bulk), subtracted from the corresponding total list price, leaves the gross margin. This is expressed as a percent of net price and is compared to that figure for other customers. For Mr. Livas and the A & P outlet, the results are as follows:

|  | Mr. Livas        | A & P              |
|--|------------------|--------------------|
| Total delivery time  | 189.62 min.      | 609.30 min.        |
| Less: delivery time for butter, eggs,<br>and bulk products | 8.95             |                    |
| Revised total delivery time                                | 180.67 min.      | 609.30 min.        |
| *Total delivery cost                                       | \$ 33.79         | \$ 113.69          |
| Total platform cost (6)                                    | \$131.69         | \$ 867.13          |
| Total list price (7)                                       | \$212.61         | \$1 383.67         |
| Total discount (8)   | \$ 15.08 (7.09%) | \$ 152.20 (11.00%) |
| Gross margin   | \$ 32.08         | \$ 259.65          |
| Net Price (list price - discount)                          | \$197.56         | \$1 231.47         |
| % Gross Margin to Net Price                                | 16.24%           | 20.35%             |

\* Includes payment of store license fee - \$6.00 per year or \$0.115 per week.

[fol. 962] In this case, the A & P outlet received a larger discount rate, and Bowman Dairy enjoyed a greater gross margin from this store than from Mr. Livas. The summary table for all customers on Route #1177, which follows, shows the same type of result between A & P and any other store. This indicates then, that the lower net price, in each comparison, does not exceed the effect of cost differences due to higher volume purchases and fewer delivery services.

This kind of test can be applied to any route, comparing the differences in gross margins and the differences in discount rates. It will either support or disqualify the discount granted to chain outlets in relation to the independent



stores on their respective routes. To cost-justify the chain discount in general, which is 11.00% at present, requires another type of calculation which was mentioned previously.

At various volume levels, calculate the maximum available margin for an independent store (or any other group receiving equally extensive delivery services) and a chain store (or any other group receiving equally limited delivery services). By subtracting the current published discount rate to independent stores from their maximum available margin, the gross margin on independent store [fol. 963] transactions is determined. This same gross margin when deducted from the maximum margin available to chain stores, determines the Minimum Profit-Maximum Discount line for their transactions.

For each chain outlet, read from this line the discount rate which could be rebated, at the specific daily average volume purchased by it. Extend each store's sales by its allowable rate. Summarize this extension for all outlets served by Bowman in that chain. If this total discount exceeds that actually paid by Bowman, the actual rebate is cost-justified.

[fol. 964]

Summary Table  
Route 1177  
Week of November 15-20, 1954

| Excluding Butter, Eggs and Bulk |   |                             |   |                           |                        |                              |                 |              |   |
|---------------------------------|---|-----------------------------|---|---------------------------|------------------------|------------------------------|-----------------|--------------|---|
| Customer                        | Total<br>Delivery<br>Time, All<br>Products<br>(Minutes) | Revised<br>Delivery<br>Time | Revised<br>Delivery<br>Cost, Incl.<br>Store<br>License<br>(11 1/2¢) | Total<br>Platform<br>Cost | Total<br>List<br>Price | Discount<br>On List<br>Price | Gross<br>Margin | Net<br>Price | Gross<br>Margin<br>As A<br>Percent<br>of<br>Net Price |
| S. Livas.....                   | 189 62  | 180 67                      | \$ 33 79  | \$131 69                  | \$212 64               | \$ 15 08 (7 09%)             | \$ 32 08        | \$ 197 56    | 16 24%  |
| J. Mandala.....                 | 127 79  | 126 43                      | 23 68   | 72 21                     | 113 12                 | 6 36 (5 62%)                 | 10 87           | 106 76       | 10 18%  |
| J. Raimer.....                  | 80 19   | 78 98                       | 14 84   | 14 64                     | 23 31                  | 0 86 (3 68%)                 | 7 03            | 22 45        | —   |
| J. Lohan.....                   | 182 75  | 179 58                      | 33 59   | 131 44                    | 208 16                 | 14 82 (7 12%)                | 28 31           | 193 34       | 14 64%  |
| H. Heuer.....                   | 125 62  | 123 92                      | 23 21   | 67 28                     | 106 60                 | 6 03 (5 66%)                 | 10 08           | 100 57       | 10 02%  |
| A & P.....                      | 609 30  | 609 30                      | 113 69  | 867 13                    | 1,383 67               | 152 20 (11 00%)              | 250 65          | 1,231 47     | 20 35%  |
| M. Musso.....                   | 96 23   | 93 63                       | 17 57   | 31 29                     | 49 64                  | 2 26 (3 56%)                 | 1 48            | 47 38        | —   |
| G. Kruse.....                   | 121 37  | 118 77                      | 22 25   | 65 70                     | 105 02                 | 5 71 (5 44%)                 | 11 36           | 99 31        | 11 44%  |
| T. Frigo.....                   | 177 33  | 173 25                      | 32 41   | 120 18                    | 191 05                 | 13 14 (6 88%)                | 25 32           | 177 91       | 14 23%  |
| D. George.....                  | 98 45   | 98 45                       | 18 47   | 32 97                     | 52 48                  | 2 35 (4 48%)                 | 1 31            | 50 13        | —   |
|                                 | 1,808 65  |                             |   |                           |                        |                              |                 |              |   |

Cost rate = \$56.18 × 6 = \$ 1864 per route minute  
1808.65

[fol. 965]

## Appendix A

## Standard Time Allowances Developed from 1949 Time Studies

| Work Element           | No. of Customers               | No. of Units         | No. of Cases            | Total Minutes | Standard Minutes                          |
|------------------------|--------------------------------|----------------------|-------------------------|---------------|---|
| Get order              | 1,265                          |                      |                         | 1734 96       | 1 37 (avg.) per cust.                     |
| Delay to get order     | 1,265                          |                      |                         | 137 45        | 11 (avg.) per cust.                       |
| Select merchandise     | 1                              | 13 for 1st case and  | 48 for each additional  |               |   |
| Unload order           |                                |                      | 3428 24                 | 317 91        | 092 (avg.) per case                       |
| Deliver order          |                                | 795 for 1st case and | 295 for each additional |               |   |
| Make out delivery slip | 1,089                          |                      |                         | 2335 77       | 2 14 (avg.) per cust.                     |
| Have ship checked      | 1,089                          |                      |                         | 211 38        | 19 (avg.) per cust.                       |
| Route bookkeeping      | 739                            |                      |                         | 462 88        | 63 (avg.) per cust.                       |
| Sort glass bottles     |                                | 12,115               |                         | 309 15        | 025 per glass bottl.                      |
| Pick up empties        |                                | 43 for 1st case and  | 23 for each additional  |               |   |
| Load empties on truck  |                                |                      | 2530 00                 | 276 48        | 109 (avg.) per case                       |
| Arrange load           |                                |                      | 3428 24                 | 1292 38       | 377 (avg.) per case                       |
| Drive on route         | (See separate table and graph) |                      |                         |               |   |
| Load cases at plant    |                                |                      | 3281 90                 | 284 41        | 143 (avg.) per case                       |
| Unload cases at plant  |                                |                      | 1321 00                 | 268 90        | 20 (avg.) per case                        |
| Customer services      |                                | 66,574               |                         | 2332 75       | 033 (avg.) per unit except A&P and Kroger |
| Collect                | 943                            |                      |                         | 1128 58       | 1 19 (avg.) per cash customer             |
| Delay to collect       | 943                            |                      |                         | 124 64        | 13 (avg.) per cash customer               |

## [fol. 966] Analysis of 22 Time Studies for Unloading Cases at Plant

|                            | No. of Occurrences | No. of Cases | Total Minutes | Average Minutes per Case |
|----------------------------|--------------------|--------------|---------------|--------------------------|
| Unload 1 case glass        | 442                | 442          | 30 49         |                          |
| Unload 2 cases glass       | 8                  | 16           | 2 96          |                          |
| Unload 1 case paper        | 48                 | 48           | 4 04          |                          |
| Unload 2 cases paper       | 12                 | 24           | 1 51          |                          |
| Unload 3 cases paper       | 4                  | 12           | 63            |                          |
| Unload 4 cases paper       | 10                 | 40           | 1 13          |                          |
| Unload 5 cases paper       | 140                | 700          | 9 64          |                          |
| Drag 1 case to truck door  | —                  | —            | —             |                          |
| Drag 2 cases to truck door | 6                  | —            | 1 78          |                          |
| Drag 3 cases to truck door | 4                  | —            | 45            |                          |
| Drag 4 cases to truck door | 17                 | —            | 3 20          |                          |
| Drag 5 cases to truck door | 139                | —            | 14 45         |                          |
| Arrange cases to unload    | 5                  | —            | 2 61          |                          |
| Drive to next van          | 70                 | —            | 154 54        |                          |
| Drive to unload returns    | 22                 | —            | 26 12         |                          |
| Unload returns             | 22                 | 35           | 13 91         |                          |
| Carry 1 case to other van  | 2                  | 2            | 82            |                          |
| Carry 2 cases to other van | 1                  | 2            | 62            |                          |
| Total                      |                    | 1,321        | 268 90        | 20 Standard              |

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## Bowman Dairy

Driving Time - State Route  
Minutes per Mile (Gas Truck)

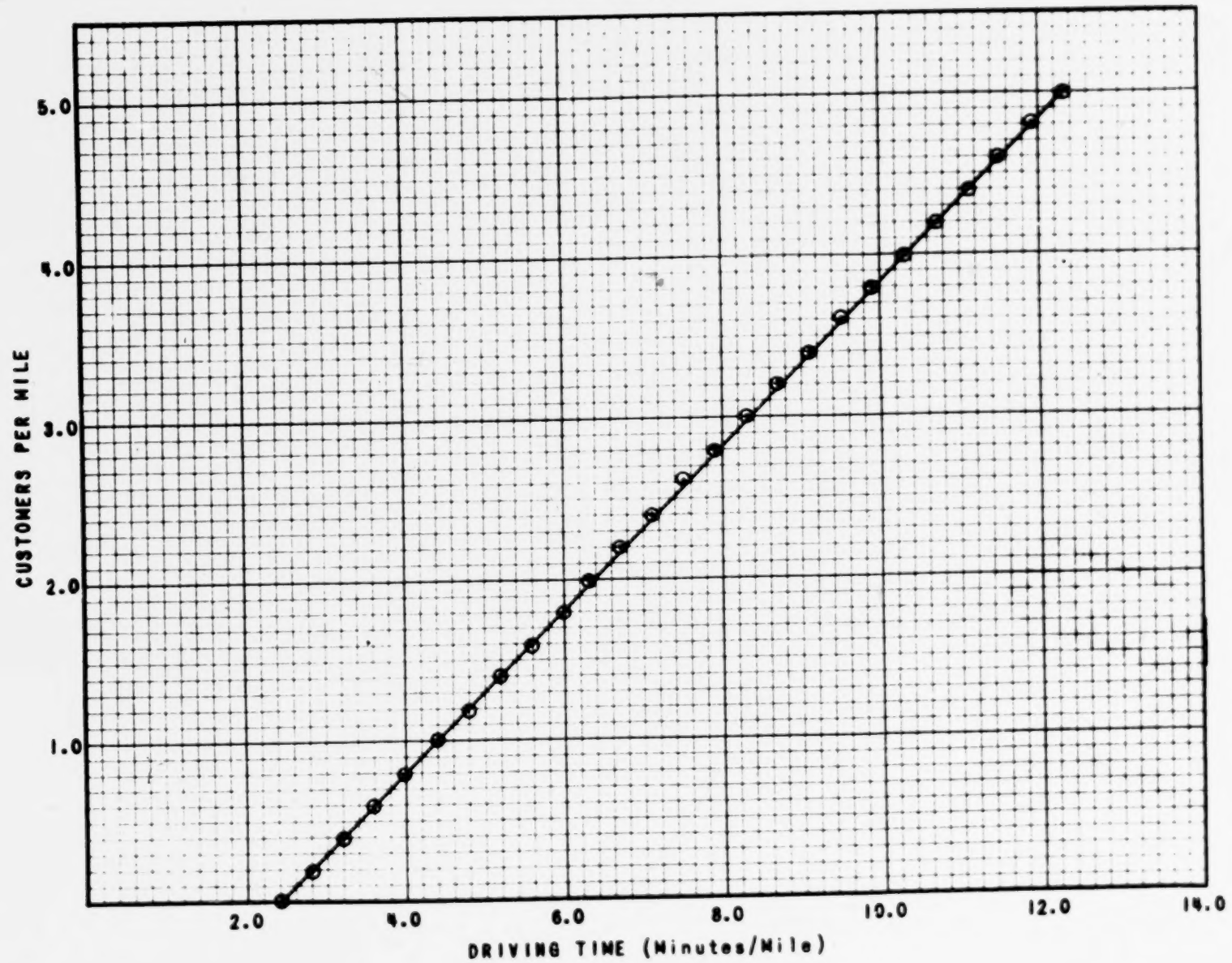
Cumulative  
per Mile

Minutes  
per Mile

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0.6  
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11.9  
12.3

DRIVING TIME - GAS TRUCK  
STORE ROUTE



[fol. 969]

## Appendix B

## Development of Delivery Time Standards

Time studies were taken in four store divisions, but principally in the Elston Division.

Several route foremen familiar with normal delivery operations, were trained to make time studies. Time data from their studies were the basis for subsequent delivery standards.

Time studies were taken from continuous running stop watches and recorded on time study sheets for the following operational elements:

1. *Check In*

Punch clock, go to locker room and change clothes. Any stop for conversation or other reason was recorded as Miscellaneous or Personal Time.

2. *Pick Up Loading or Order Sheet*

Go to office, supervisor or other place and get loading sheet, order sheet, changes in customers' orders or other instructions.

3. *Get Vehicle*

Go to garage or parking lot and get vehicle. This time ends when he starts from garage or parking lot to go direct to the route or when he arrives at a loading point to pick up extra products which have not been loaded by the loading crew.

[fol. 970] 4. *Service Vehicle*

Service vehicle with gas, water and oil or wait for mechanic to perform these operations. Wash vehicle and ice load.

5. *Wait to Service Vehicle*

Wait to get vehicle into position to be serviced.

6. *Load Truck At Plant*

Load additional orders received after truck was loaded by loading crew or some miscellaneous by products (List number of cases loaded).

7. *Wait to Load Truck*

8. *Check Load*9. *Drive to First Delivery Stop*

Record time and mileage from plant to first stop on route.

10. *Drive On Route*

This is the time for driving from one customer to the next.

11. *Sell Or Get Order*

Dismount from truck, travel to customer, investigate ice box, or obtain written or verbal order and return to truck. On travel from point of delivery, obtain order and return to truck. If empties are picked up after receiving the order, the time ends when the order is received and travel time to empty storage is included in Pick Up Empties. Actual selling is done by solicitors and not by drivers.

12. *Delay In Selling Or Getting Order*

Any time waiting for store to open or waiting for customer to perform other operations before placing the order.

[fol. 971] 13. *Select Merchandise*

Leave seat, open truck door if necessary, enter truck, place cases to be delivered to a customer near the truck door, stack extra containers on top of cases and dismount from truck.

14. *Unload Order*

Remove selected cases from floor of truck and place on ground, hand truck or dolly.

15. *Deliver*

Pick up case and carry to customer's delivery point; or engage bottom case of stack with hook and drag cases to delivery point; or push hand truck or dolly loaded with cases to delivery point.

16. *Customer Service*

Any specific service rendered individual customers beyond regular delivery of products such as:

- a. Move cases to another part of the store other than the place where original delivery ended.

- b. Place containers in ice box.
  - c. Arrange containers in ice box.
  - d. Provide customer with ice.
17. *Deliver and Return to Truck For Another Delivery*
  18. *Go To Empty Bottle Storage*  
Go from delivery or collection point to empty bottle storage.
  19. *Sort Bottles*  
Separate bottles belonging to other dairies from those belonging to driver's company.
  20. *Pick Up Empties*  
Pick up or load empty bottles and cases on hand truck or dolly and return to truck.
  - [fol. 972] 21. *Load Empties On Truck*  
Pick up empty bottles and cases and place in truck. Record number of cases.
  22. *Prepare Bill Or Delivery Slip*  
Includes counting, recording and pricing of quantities delivered and entering deposits and refunded deposits on bottles and/or cases.
  23. *Have Slip And Delivery Checked By Customer*  
Travel to customer and present slip for verification and/or signature.
  24. *Delay In Having Slip And Delivery Checked*
  25. *Collect*  
Present delivery slip or bill to customer, make change and receipt slip.
  26. *Delay In Collecting*
  27. *Return To Truck After Collection*
  28. *Arrange Load*  
All movement of cases and containers within the truck to obtain access to required products or relieve congestion near truck doors.
  29. *Route Bookkeeping*  
Enter deliveries, total sales, deposits and deposit refunds for each customer in route book.



30. *Drive From Last Stop To Plant*31. *Delay To Unload Empties Or Returned Goods At Plant*

Wait to move truck into position to unload; wait for van man, talk to van man or any other person.

32. *Unload Empties At Plant*

Record number of cases.

[fol. 973] 33. *Unload Returned Goods*

Record number of cases and containers.

34. *Garage Vehicle*

Time required to drive to garage or parking lot from point where returned goods are unloaded or truck is serviced and park vehicle.

35. *Office Bookkeeping*

Prepare necessary records for cashier. Balance original load against cash receipts, signed bills, returned merchandise, bottle and case deposits and credits.

36. *Turn In Cash To Cashier*37. *Prepare Order Or Loading Sheet For Next Day*38. *Miscellaneous Time*

Any time which cannot be charged directly to a delivery or preparation for delivery such as:

- a. Lunch
- b. Stop for coffee
- c. Telephone
- d. Personal time

Operations were broken down into the operational elements previously described to provide a sequence of normal activities of drivers for time studies to be made, and also to determine whether there was sufficient deviation from these activities or methods of procedure to necessitate additional time studies to be taken to determine proper standard time allowances.

[fol. 974] The analysis of the time studies showed there was sufficient consistency by drivers to set standard time

allowances on all except Unloading Empties and Returned Goods at the plant.

Additional time studies were later taken on the following operational elements for Unloading Empties and Returned Goods At Plant to obtain a more accurate standard time allowance:

31. *Delay To Unload*

Wait to move truck into position to unload, wait for van man, talk to van man or any other person.

32-A *Unload One Case of Glass*

Time for picking up case from floor of truck and either hand to van man or place on van floor.

32-B *Unload Two Cases of Glass*

Time for picking up cases from floor of truck and either hand to van man or place on van floor.

32-C *Unload One Case Of Paper*

Time for picking up case from floor of truck and either hand to van man or place on van floor.

32-D *Unload Two Cases Of Paper*

Time for picking up cases from floor of truck and either hand to van man or place on van floor.

32-E *Unload Three Cases Or More Of Paper*

(Record number)

Time for picking up cases from floor of truck and either hand to van man or place on van floor.

[ fol. 975 ] 32-F *Drag A Stack Of Cases To Truck Door For Unloading*

Record number in stack.

32-G *Arrange Cases To Unload*

32-H *Drive To Next Van*

32-I *Drive To Unload Returned Goods*

4 *Service Truck*

33 *Unload Returned Goods*

Record cases of glass, cases of paper, cases of butter, eggs and cheese.

The time from the time studies for delivery elements previously described were combined to form complete operations, which were then divided into two divisions as follows:

*A. Make Ready And Personal Time*

- a. Check In
  - Element 1 Check In
- b. Get And Garage Vehicle
  - Element 3 Get Vehicle
  - Element 34 Garage Vehicle
- c. Prepare For Delivery
  - Element 2 Pick Up Loading Or Order Sheet
  - Element 4 Service Vehicle
  - Element 5 Wait To Service Vehicle
  - Element 8 Check Load
- [fol. 976] d. Office Bookkeeping
  - Element 35 Office Bookkeeping
  - Element 36 Turn In Cash To Cashier
  - Element 37 Prepare Order Or Loading Sheet For Next Day
- e. Miscellaneous Time
  - Element 38 Miscellaneous Time
- f. Drive To And From Route
  - Element 9 Drive To First Delivery Stop
  - Element 30 Drive From Last Stop To Plant
- g. Delay To Load and Unload At Plant
  - Element 7 Wait To Load Truck
  - Element 31 Delay To Unload Empties Or Returned Goods At Plant

*B. Route Time*

- a. Sell Or Get Order
  - Element 11 Sell Or Get Order
- b. Delay To Sell Or Get Order
  - Element 12 Delay In Selling Or Getting Order
- c. Customer Service
  - Element 16 Customer Service
- d. Make Out Order Slip
  - Element 22 Prepare Bill or Delivery Slip
- e. Have Slip And Delivery Checked
  - Element 23 Have Slip And Delivery Checked By Customer

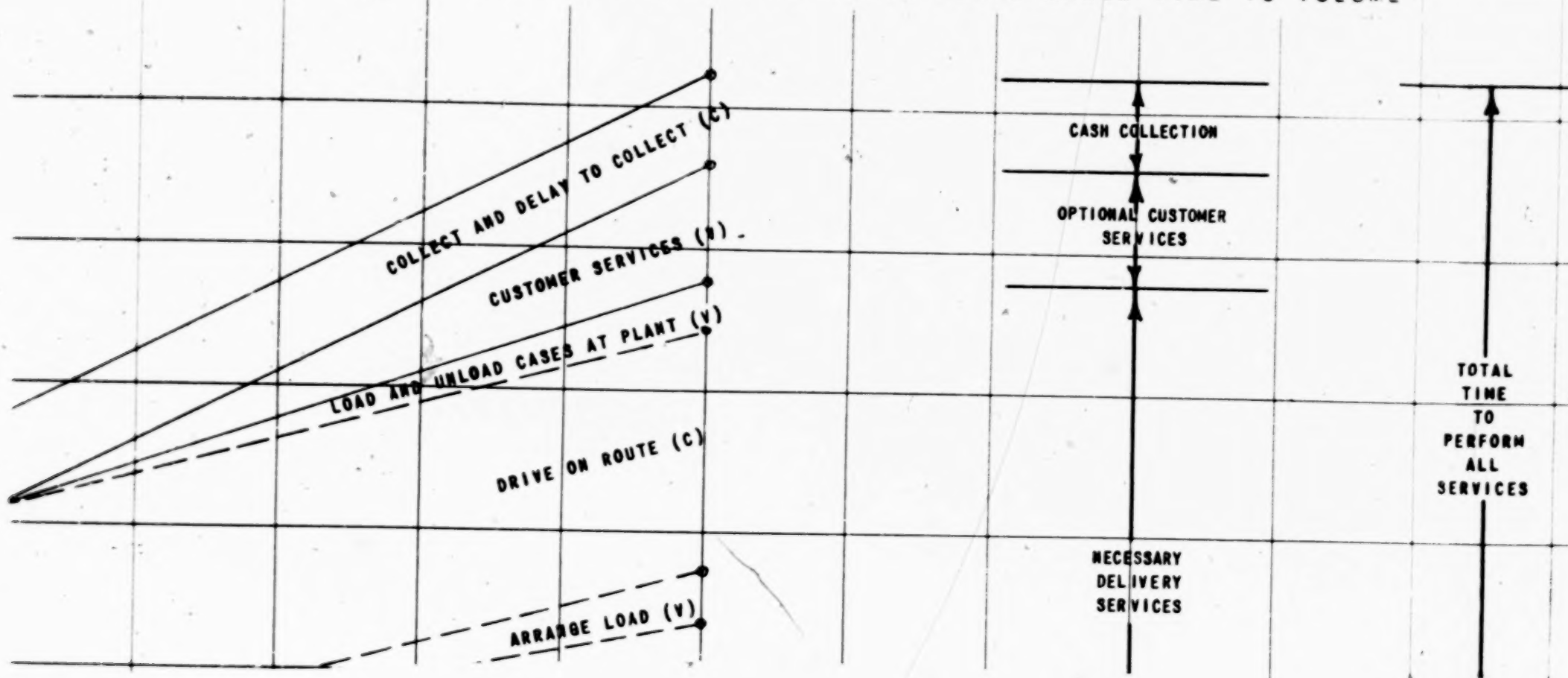
- Element 24 Delay In Having Slip And Delivery Checked
- [fol. 977] f. Collect
  - Element 25 Collect
  - Element 27 Return To Truck After Collection
- g. Delay To Collect
  - Element 26 Delay In Collecting
- h. Route Bookkeeping
  - Element 29 Route Bookkeeping
- i. Drive
  - Element 10 Drive On Route
- j. Load Cases At Plant
  - Element 6 Load Truck At Plant
- k. Select Merchandise
  - Element 13 Select Merchandise
- l. Unload Order
  - Element 14 Unload Order
- m. Deliver
  - Element 15 Deliver
  - Element 17 Deliver And Return To Truck For Another Delivery
- n. Sort Bottles
  - Element 18 Go To Empty Bottle Storage
  - Element 19 Sort Bottles
- o. Pick Up Empties
  - Element 20 Pick Up Empties
- p. Load Empties On Truck
  - Element 21 Load Empties On Truck
- [fol. 978] q. Arrange Load
  - Element 28 Arrange Load
- r. Unload Cases At Plant
  - Element 32-A Unload One Case Of Glass
  - Element 32-B Unload Two Cases Of Glass
  - Element 32-C Unload One Case Of Paper
  - Element 32-D Unload Two Cases Of Paper
  - Element 32-E Unload Three Or More Cases Of Paper
  - Element 32-F Drag A Stack Of Cases To Truck
  - Element 32-G Arrange Cases To Unload
  - Element 32-H Drive To Next Van

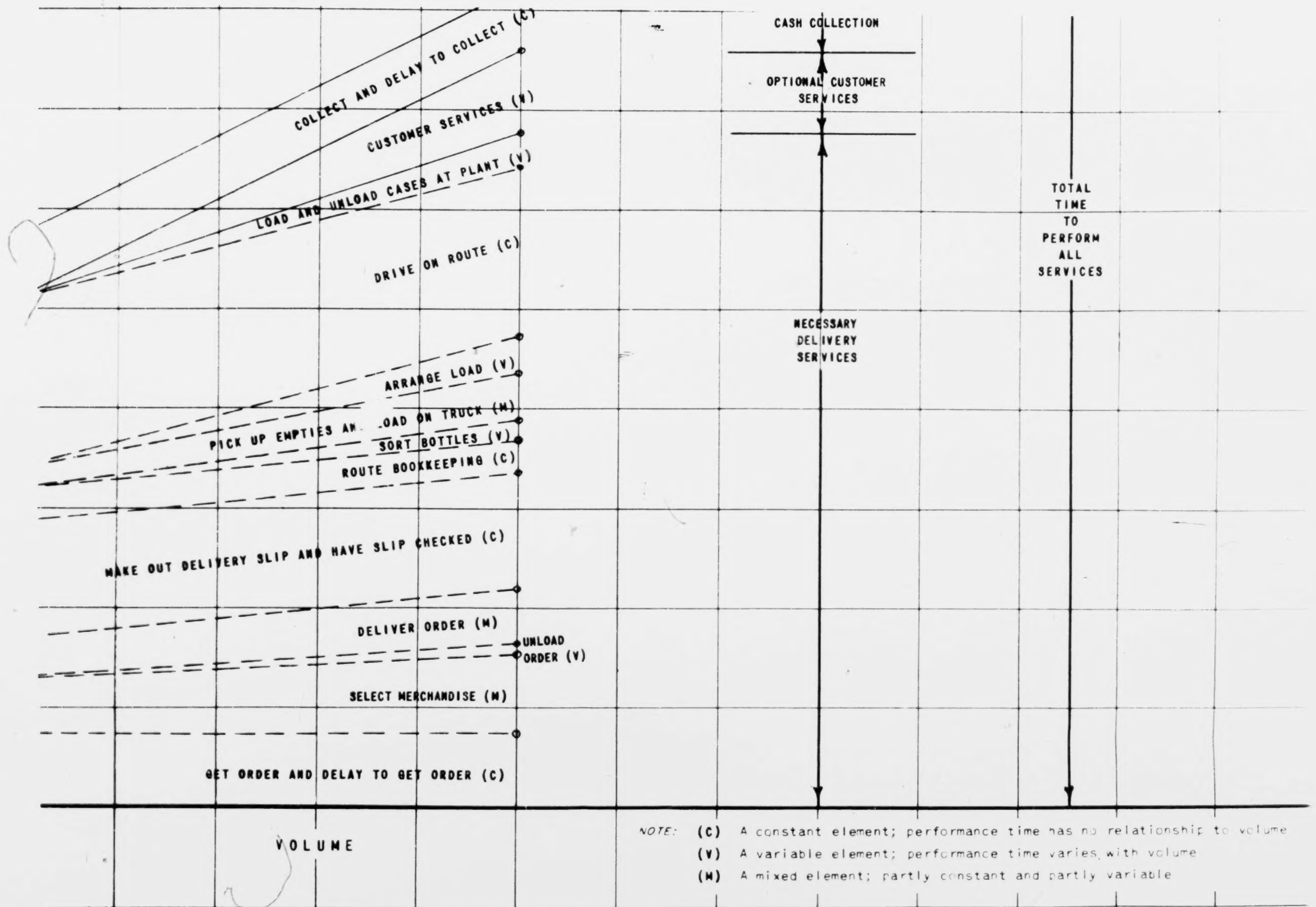
Element 32-I    Drive To Unload Returned  
                         Goods

Element 33    Unload Returned Goods

Standard time allowances for the preceding operations were developed from the time studies as shown in Appendix A.

# STORE DELIVERY WORK ELEMENTS AND THE RELATIONSHIP OF THEIR PERFORMANCE TIME TO VOLUME





(Ed. 981)

## Schedule 2

Determination of a Store Discount Schedule  
(Refer to Time Standards in Appendix)

| Deliver | Sort<br>Bottles (2) | Pick Up<br>Empties | Load<br>Empties<br>on Truck | Average<br>Load | Unload<br>Cases<br>at Plant | Total<br>Delivery<br>Time | Total<br>Delivery<br>Cost<br>(15c Min.) | Delivery<br>Cost per<br>Quintal | Delivery and<br>Platform Cost<br>per Quintal | Margin Between<br>Last Price<br>(201) and<br>First Price | Margin<br>Expressed as<br>% of Last Price |
|---------|---------------------|--------------------|-----------------------------|-----------------|-----------------------------|---------------------------|---|---------------------------------|--|--|---|
| 795     | —                   | 43                 | 016                         | 158             | 084                         | 12 232                    | 183 480c                                | 18 35c                          | 32 35c                                       |  |   |
| 795     | —                   | 43                 | 090                         | 313             | 166                         | 42 939                    | 194 085                                 | 9 70                            | 24 70  |  |   |
| 869     | —                   | 488                | 136                         | 471             | 250                         | 43 908                    | 208 620                                 | 6 95                            | 20 95  |  |   |
| 993     | —                   | 584                | 182                         | 630             | 334                         | 15 046                    | 225 690                                 | 5 64                            | 19 64  | 0 80c  | 4 20                                      |
| 1 114   | —                   | 678                | 227                         | 784             | 416                         | 16 167                    | 242 505                                 | 3 85                            | 18 85  | 1 65   | 8 05                                      |
| 1 238   | —                   | 775                | 273                         | 943             | 500                         | 17 307                    | 259 605                                 | 4 33                            | 18 53  | 2 17   | 10 59                                     |
| 1 361   | —                   | 872                | 318                         | 1 101           | 584                         | 18 443                    | 276 645                                 | 3 95                            | 17 95  | 2 55   | 12 44                                     |
| 1 482   | —                   | 966                | 363                         | 1 255           | 666                         | 19 564                    | 293 460                                 | 3 69                            | 17 69  | 2 81   | 13 71                                     |
| 1 606   | 1 063               | 409                | 409                         | 1 414           | 750                         | 20 703                    | 310 545                                 | 3 45                            | 17 45  | 3 05   | 14 88                                     |
| 1 730   | 1 159               | 455                | 455                         | 1 572           | 834                         | 21 840                    | 327 600                                 | 3 28                            | 17 28  | 3 22   | 15 71                                     |
| 1 975   | 1 350               | 545                | 545                         | 1 885           | 1 000                       | 24 100                    | 361 500                                 | 3 01                            | 17 01  | 3 49   | 17 02                                     |
| 2 220   | 1 541               | 635                | 635                         | 2 198           | 1 166                       | 26 360                    | 395 400                                 | 2 82                            | 16 82  | 3 68   | 17 95                                     |
| 2 468   | 1 734               | 727                | 727                         | 2 515           | 1 334                       | 28 636                    | 429 540                                 | 2 68                            | 16 68  | 3 82   | 18 63                                     |
| 2 713   | 1 925               | 818                | 818                         | 2 828           | 1 500                       | 30 897                    | 463 455                                 | 2 57                            | 16 57  | 3 93   | 19 17                                     |
| 2 957   | 2 116               | 908                | 908                         | 3 140           | 1 666                       | 33 154                    | 497 310                                 | 2 49                            | 16 49  | 4 01   | 19 56                                     |
| 3 267   | 2 357               | 1 022              | 1 022                       | 3 536           | 1 876                       | 35 997                    | 539 955                                 | 2 40                            | 16 40  | 4 10   | 20 00                                     |



[fol. 982]

## Schedule 2A

Determination of a Chain Store Discount Schedule  
(Refer to Schedule #2)

| Volume<br>(Fibre Quarts<br>of Milk<br>per Day) | Total*<br>Delivery<br>Time<br>(Minutes) | Total<br>Delivery<br>Cost<br>(15¢ Min.) | Delivery<br>Cost per<br>Quart | Delivery &<br>Platform<br>Cost per<br>Quart | Margin<br>Between<br>Last Price<br>(20 <sup>1</sup> / <sub>2</sub> ¢)<br>and<br>Total Cost | Margin<br>Expressed<br>as a % of<br>Last Price |
|--|---|---|-------------------------------|---|--|--|
| 10   | 10 582                                  | 158 730¢                                | 15 87¢                        | 29 87¢                                      |  |  |
| 20   | 10 959                                  | 164 385                                 | 8 22                          | 22 22                                       |  |  |
| 30   | 11 598                                  | 173 970                                 | 5 80                          | 19 80                                       | 0 70¢  | 3 41   |
| 40   | 12 406                                  | 186 090                                 | 4 65                          | 18 65                                       | 1 85   | 9 02   |
| 50   | 13 197                                  | 197 955                                 | 3 96                          | 17 96                                       | 2 54   | 12 39  |
| 60   | 14 007                                  | 210 105                                 | 3 50                          | 17 50                                       | 3 00   | 14 63  |
| 70   | 14 813                                  | 222 195                                 | 3 17                          | 17 17                                       | 3 33   | 16 24  |
| 80   | 15 604                                  | 234 060                                 | 2 93                          | 16 93                                       | 3 57   | 17 41  |
| 90   | 16 413                                  | 246 195                                 | 2 73                          | 16 73                                       | 3 77   | 18 39  |
| 100  | 17 220                                  | 258 300                                 | 2 58                          | 16 58                                       | 3 92   | 19 12  |
| 120  | 18 820                                  | 282 300                                 | 2 35                          | 16 35                                       | 4 15   | 20 24  |
| 140  | 20 420                                  | 306 300                                 | 2 19                          | 16 19                                       | 4 31   | 21 02  |
| 160  | 22 036                                  | 330 540                                 | 2 07                          | 16 07                                       | 4 43   | 21 61  |
| 180  | 23 637                                  | 354 555                                 | 1 97                          | 15 97                                       | 4 53   | 22 10  |
| 200  | 25 234                                  | 378 510                                 | 1 89                          | 15 89                                       | 4 61   | 22 49  |
| 225  | 27 252                                  | 408 780                                 | 1 82                          | 15 82                                       | 4 68   | 22 83  |
| 300  | 33 267                                  | 499 005                                 | 1 66                          | 15 66                                       | 4 84   | 23 61  |
| 400  | 40 166                                  | 602 490                                 | 1 51                          | 15 51                                       | 3 99   | 24 34  |
| 500  | 49 310                                  | 739 650                                 | 1 48                          | 15 48                                       | 5 02   | 24 49  |
| 600  | 58 660                                  | 879 900                                 | 1 47                          | 15 47                                       | 5 03   | 24 54  |

\* Total delivery time (chain stores) Equals Total delivery time (independent stores).  
Less Customer Service, Collect, and Delay to Collect.

[fol. 983]

Determination of a Chain Store Discount Schedule;  
The Minimum Profit - Maximum Discount Line  
(Based on 50% Approximation, Schedule 4)

| Volume<br>(Fibre Quarts of<br>Milk per Day) | Independent Store                   |   | Chain Store          |                                     |                              |
|---|-------------------------------------|---|----------------------|-------------------------------------|------------------------------|
|   | 1<br>Maximum<br>Available<br>Margin | 2<br>Rebated<br>Discount<br>(50% Approx.) | 3<br>Gross<br>Margin | 4<br>Maximum<br>Available<br>Margin | 5-4-3<br>Maximum<br>Discount |
| 10  |                                     |   |                      |                                     |                              |
| 20  |                                     |   |                      |                                     |                              |
| 30  |                                     | 0 7 1/2                                   |                      | 3 41 1/2                            | 3 41 1/2                     |
| 40  | 4 20 1/2                            | 2 0                                       | 2 20 1/2             | 9 02                                | 6 82                         |
| 50  | 8 05                                | 3 25                                      | 4 80                 | 12 39                               | 7 59                         |
| 60  | 10 59                               | 4 50                                      | 6 09                 | 14 63                               | 8 54                         |
| 70  | 12 44                               | 5 80                                      | 6 64                 | 16 24                               | 9 60                         |
| 80  | 13 71                               | 7 10                                      | 6 61                 | 17 41                               | 10 80                        |
| 90  | 14 88                               | 7 35                                      | 7 53                 | 18 39                               | 10 86                        |
| 100   | 15 71                               | 7 60                                      | 8 11                 | 19 12                               | 11 01                        |
| 120   | 17 02                               | 8 13                                      | 8 89                 | 20 24                               | 11 35                        |
| 140   | 17 95                               | 8 70                                      | 9 25                 | 21 02                               | 11 77                        |
| 160   | 18 63                               | 9 20                                      | 9 43                 | 21 61                               | 12 18                        |
| 180   | 19 17                               | 10 73                                     | 9 44                 | 22 10                               | 12 66                        |
| 200   | 19 56                               | 10 00                                     | 9 56                 | 22 49                               | 12 93                        |
| 225   | 20 00                               | 10 00                                     | 10 00                | 22 83                               | 12 83                        |
| 300   | 20 88                               | 10 00                                     | 10 88                | 23 61                               | 12 73                        |
| 400   | 21 71                               | 10 00                                     | 11 71                | 24 34                               | 12 63                        |
| 500   | 21 90                               | 10 00                                     | 11 90                | 24 49                               | 12 59                        |
| 600   | 22 15                               | 10 00                                     | 12 15                | 24 54                               | 12 39                        |

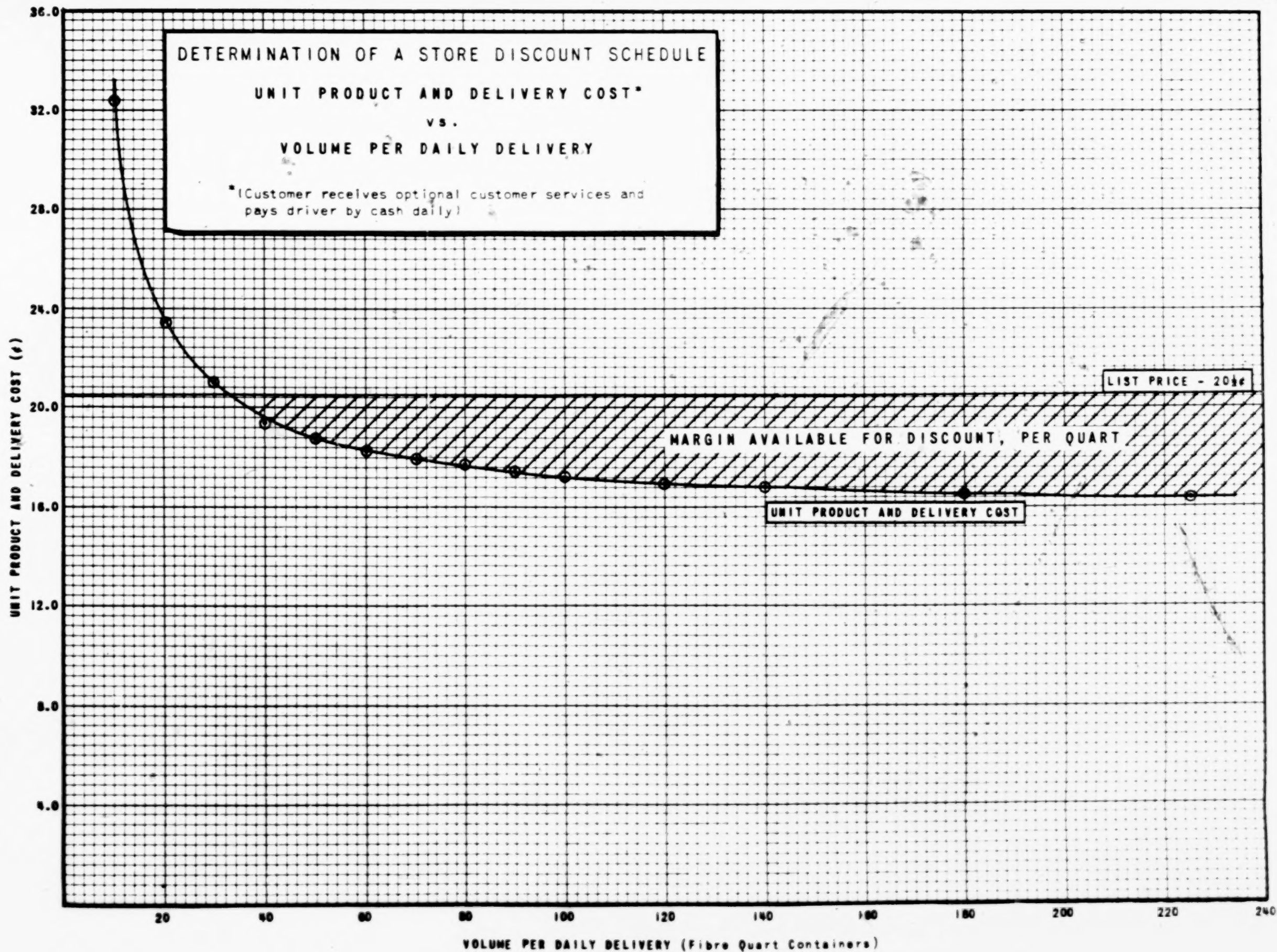
DETERMINATION OF A STORE DISCOUNT SCHEDULE

UNIT PRODUCT AND DELIVERY COST\*

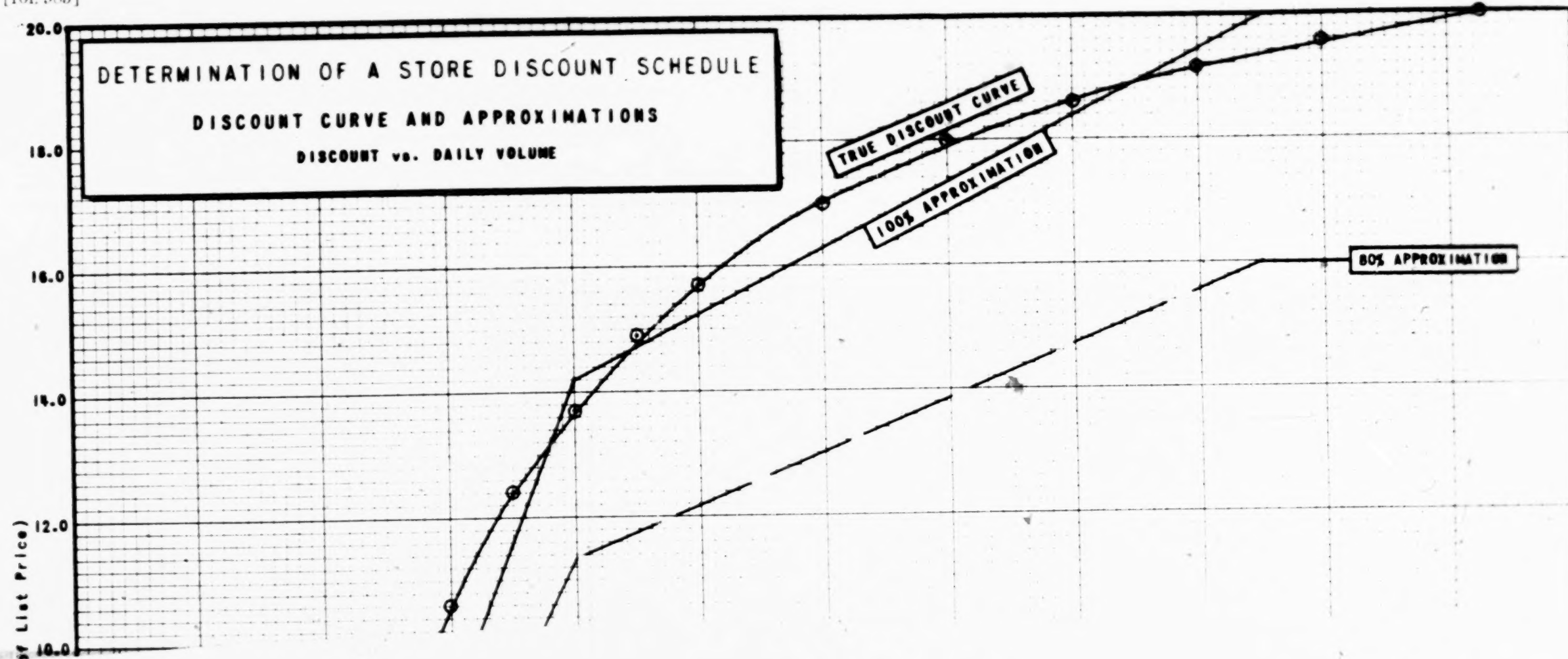
vs.

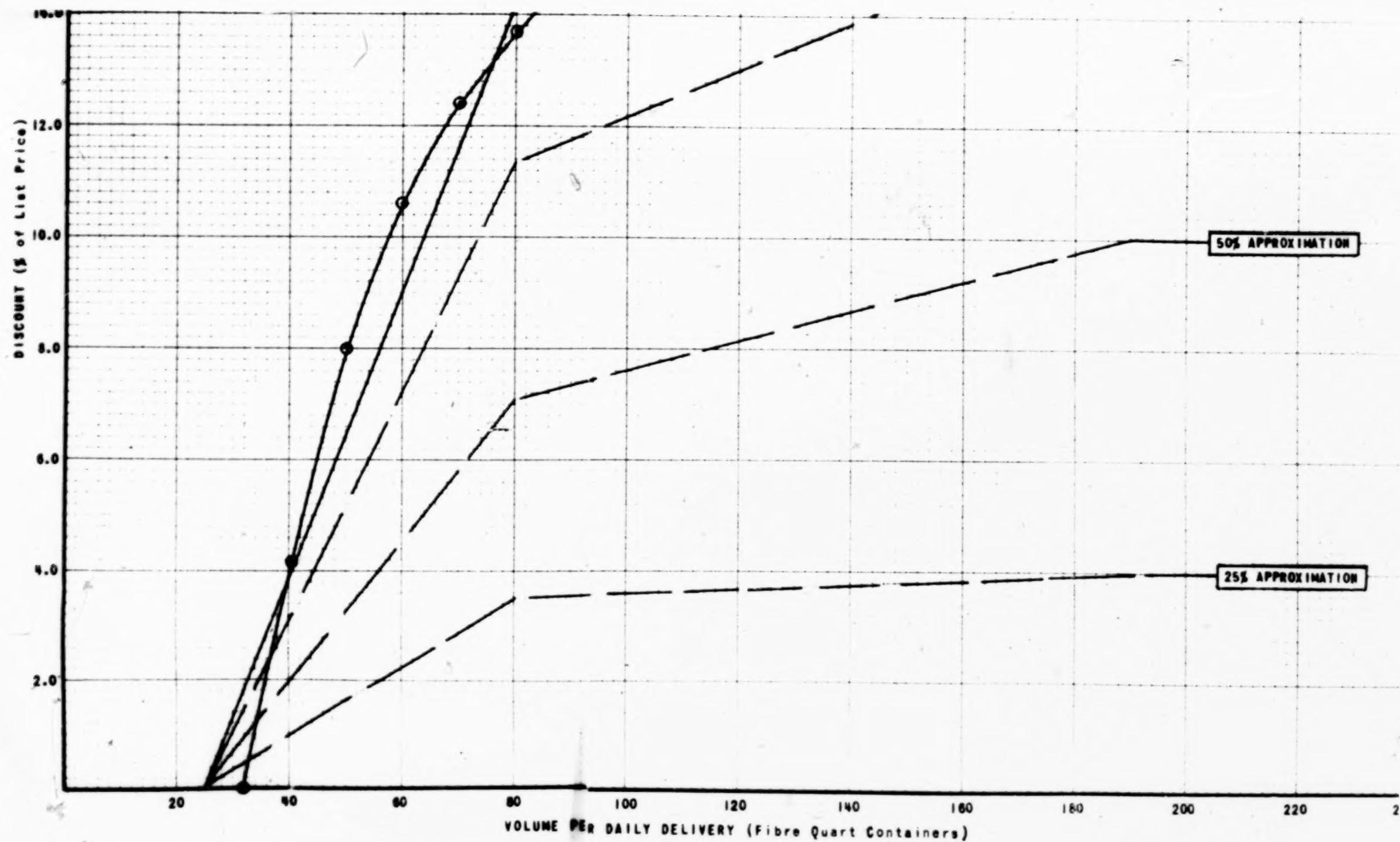
VOLUME PER DAILY DELIVERY

\* (Customer receives optional customer services and pays driver by cash daily)



[fol. 985]







[Vol. 1980]

## Schedule 2

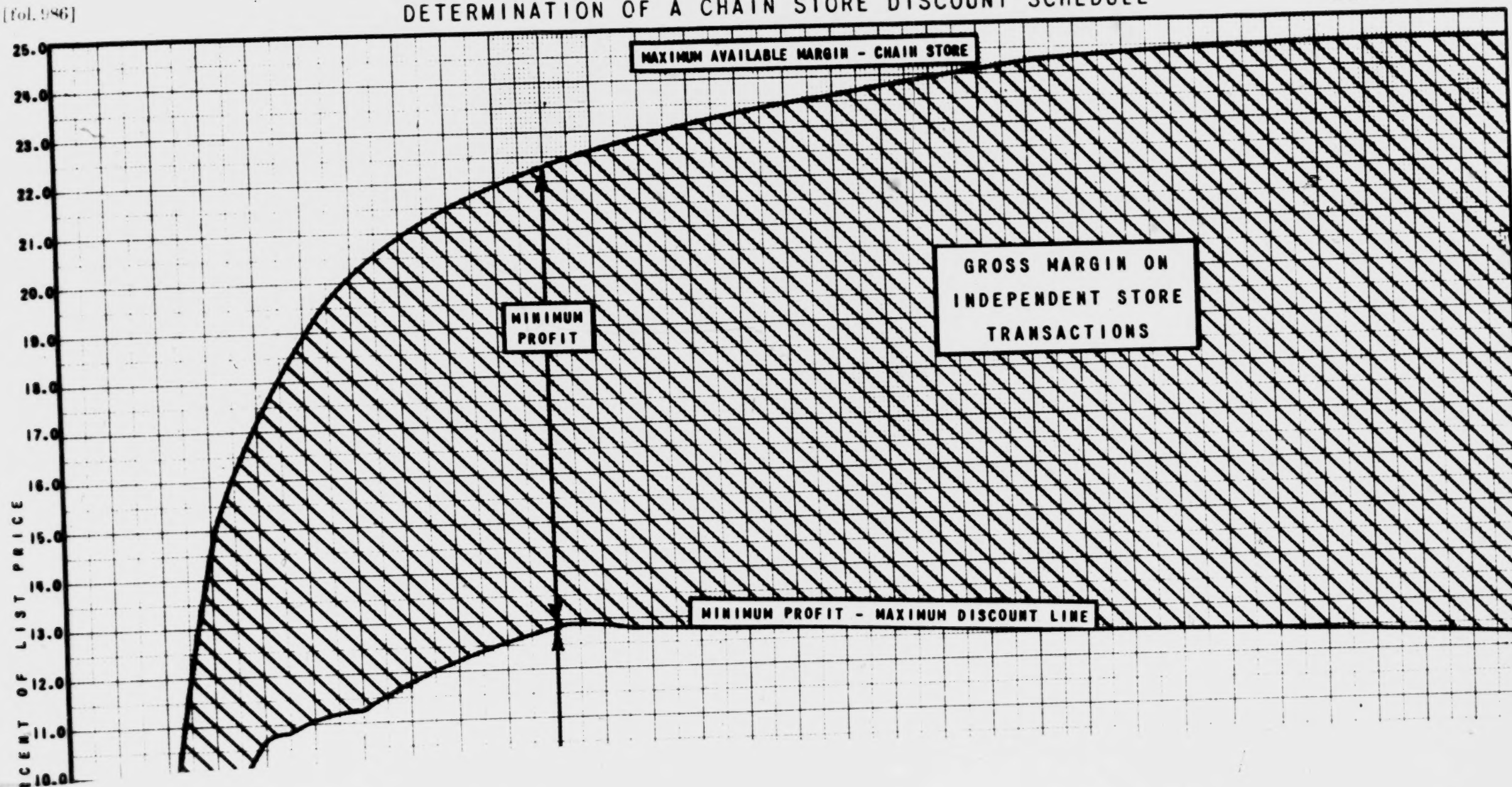
Determination of a Store Discount Schedule  
(Refer to Time Standards in Appendix)

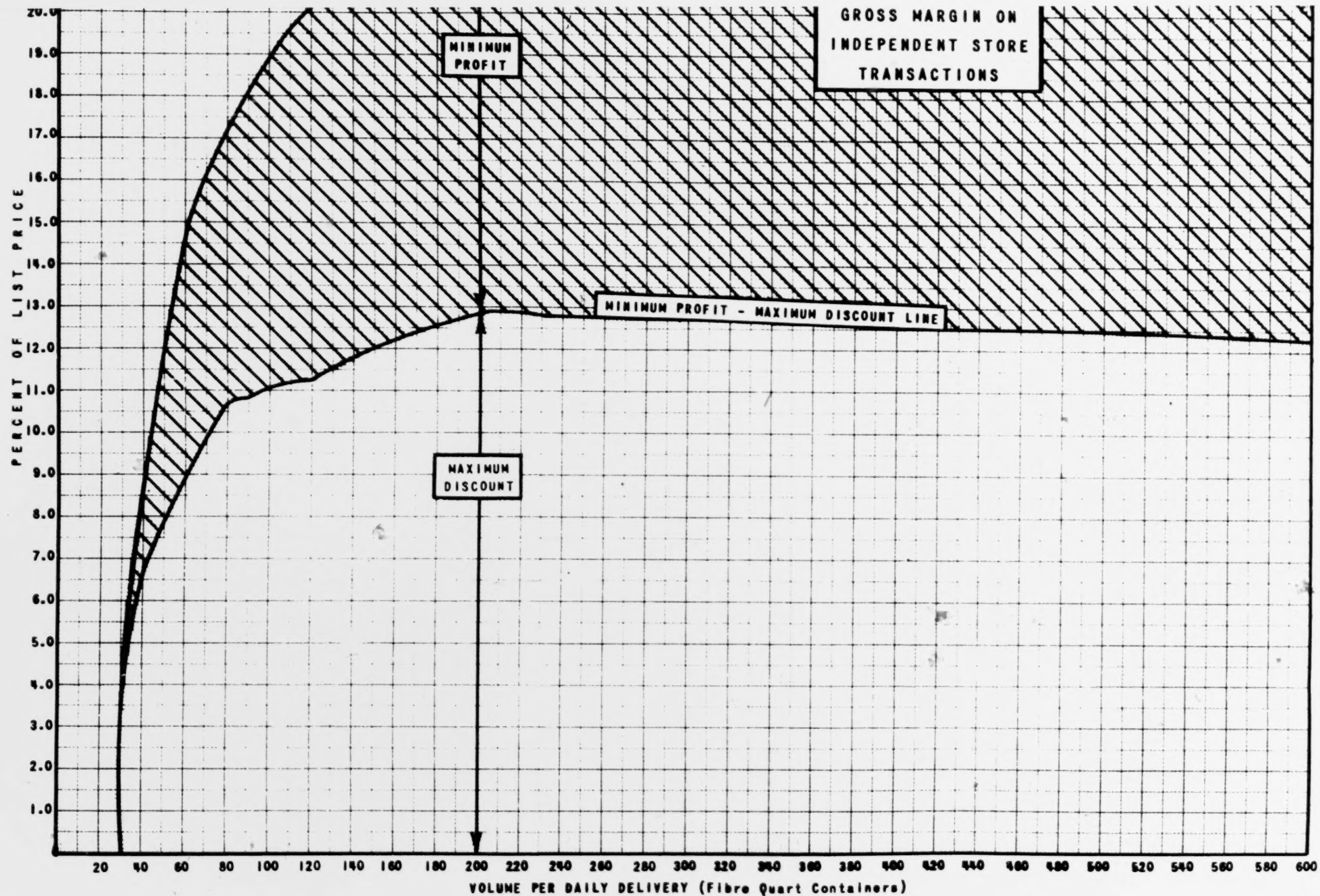
| Volume<br>(Fibre Quarts<br>of Milk<br>per Day) | Case<br>Equivalents<br>(24 Quarts<br>per Case) | Get Order | Delay to<br>Get Order | Customer<br>Service | Make Out<br>Order Slip | Have Ship<br>Checked | Route<br>Book-<br>keeping | Collect | Del. to<br>Collect | Del. on<br>Route (1) | Load Cases<br>at Plant | Select<br>Merchandise | Unload<br>Order |
|--|--|-----------|-----------------------|---------------------|------------------------|----------------------|---------------------------|---------|--------------------|----------------------|------------------------|-----------------------|-----------------|
| 10   | 42   | 1 37      | 0 11                  | 33                  | 2 14                   | 0 19                 | 0 63                      | 1 19    | 0 13               | 3 40                 | 060                    | 1 14                  | 0 59            |
| 20   | 84   | 1 37      | 0 11                  | 66                  | 2 14                   | 0 19                 | 0 63                      | 1 19    | 0 13               | 3 40                 | 119                    | 1 14                  | 0 59            |
| 30   | 1 25   | 1 37      | 0 11                  | 99                  | 2 14                   | 0 19                 | 0 63                      | 1 19    | 0 13               | 3 40                 | 179                    | 1 25                  | 115             |
| 40   | 1 67   | 1 37      | 0 11                  | 1 32                | 2 14                   | 0 19                 | 0 63                      | 1 19    | 0 13               | 3 40                 | 239                    | 1 45                  | 154             |
| 50   | 2 08   | 1 37      | 0 11                  | 1 65                | 2 14                   | 0 19                 | 0 63                      | 1 19    | 0 13               | 3 40                 | 297                    | 1 65                  | 191             |
| 60   | 2 50   | 1 37      | 0 11                  | 1 98                | 2 14                   | 0 19                 | 0 63                      | 1 19    | 0 13               | 3 40                 | 358                    | 1 85                  | 230             |
| 70   | 2 92   | 1 37      | 0 11                  | 2 31                | 2 14                   | 0 19                 | 0 63                      | 1 19    | 0 13               | 3 40                 | 418                    | 2 05                  | 269             |
| 80   | 3 33   | 1 37      | 0 11                  | 2 64                | 2 14                   | 0 19                 | 0 63                      | 1 19    | 0 13               | 3 40                 | 476                    | 2 25                  | 306             |
| 90   | 3 75   | 1 37      | 0 11                  | 2 97                | 2 14                   | 0 19                 | 0 63                      | 1 19    | 0 13               | 3 40                 | 536                    | 2 45                  | 345             |
| 100  | 4 17   | 1 37      | 0 11                  | 3 30                | 2 14                   | 0 19                 | 0 63                      | 1 19    | 0 13               | 3 40                 | 596                    | 2 65                  | 384             |
| 120  | 5 00   | 1 37      | 0 11                  | 3 96                | 2 14                   | 0 19                 | 0 63                      | 1 19    | 0 13               | 3 40                 | 715                    | 3 05                  | 460             |
| 140  | 5 83   | 1 37      | 0 11                  | 4 62                | 2 14                   | 0 19                 | 0 63                      | 1 19    | 0 13               | 3 40                 | 834                    | 3 45                  | 536             |
| 160  | 6 67   | 1 37      | 0 11                  | 5 28                | 2 14                   | 0 19                 | 0 63                      | 1 19    | 0 13               | 3 40                 | 954                    | 3 85                  | 614             |
| 180  | 7 50   | 1 37      | 0 11                  | 5 94                | 2 14                   | 0 19                 | 0 63                      | 1 19    | 0 13               | 3 40                 | 1 073                  | 4 25                  | 690             |
| 200  | 8 33   | 1 37      | 0 11                  | 6 60                | 2 14                   | 0 19                 | 0 63                      | 1 19    | 0 13               | 3 40                 | 1 191                  | 4 65                  | 766             |
| 225  | 9 38   | 1 37      | 0 11                  | 7 425               | 2 14                   | 0 19                 | 0 63                      | 1 19    | 0 13               | 3 40                 | 1 341                  | 5 15                  | 863             |

- (1) Varies by route; 3.40 minutes per customer is a reasonable time.  
 (2) To avoid complexities of product mix in this example, assume that all milk was purchased in fibre containers.  
 (3) Use 14¢ per quart for platform cost.

## DETERMINATION OF A CHAIN STORE DISCOUNT SCHEDULE

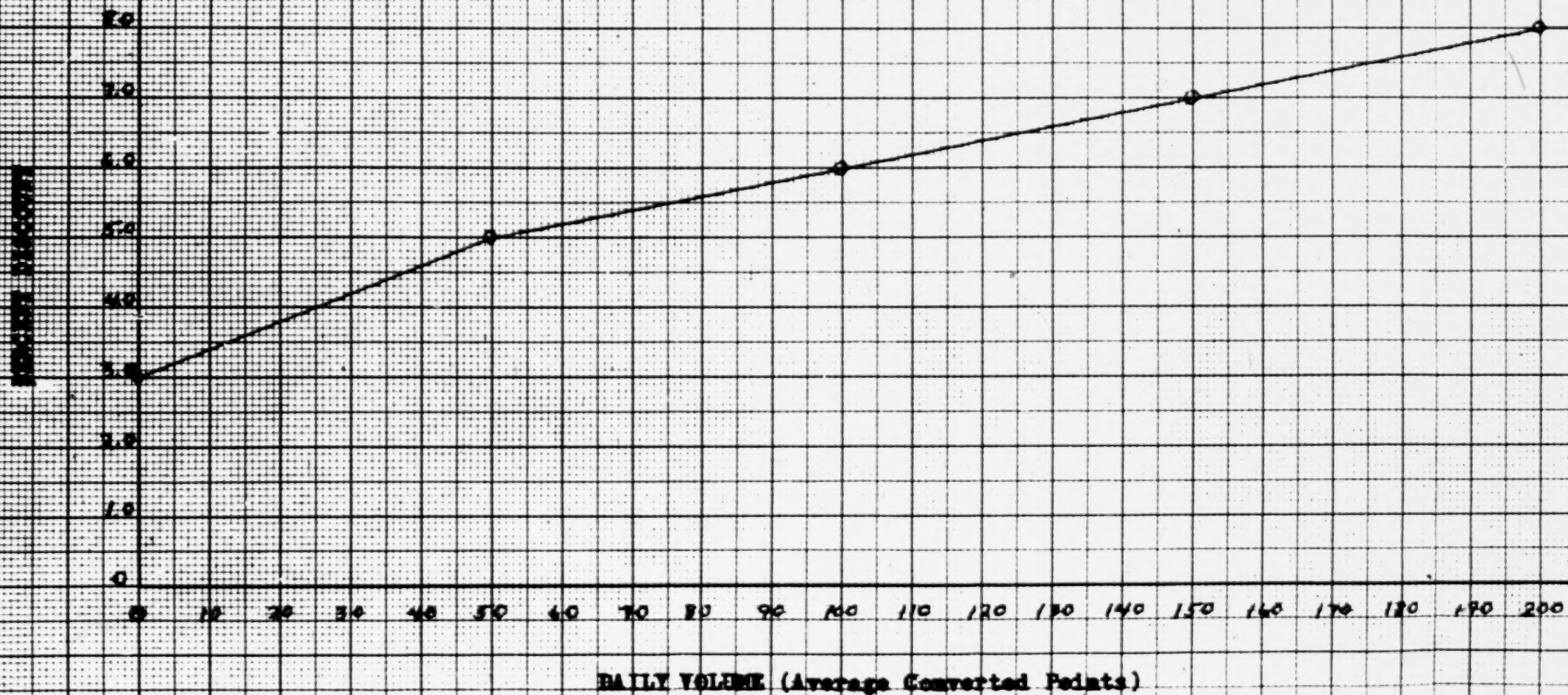
Schedule 4A







BOWMAN DAIRY COMPANY  
RETAIL STORE DISCOUNT SCHEDULE  
6/1/54 AND 8/25/54 - PRESENT





(fol. 988)

Schedule G  
Fiston Division Expenses  
November, 1954

|                                |             |             |
|--------------------------------|-------------|-------------|
| Auto Expense:                  |             |             |
| Depreciation                   | \$ 1,706.19 |             |
| Gas and oil                    | 477.65      |             |
| Insurance                      | 770.24      |             |
| License                        | 894.58      |             |
| Repairs and supplies           | 1,665.99    |             |
| Repair and upkeep wages        | 1,379.70    |             |
| Rental proration               |             | \$ 9,894.35 |
| Salaries and Wages:            |             |             |
| Delivery wages                 | \$31,608.28 |             |
| Milkroom wages                 | 7,407.79    |             |
| Solicitors' wages              | 3,520.00    |             |
| Office salaries and wages      | 4,883.16    |             |
| Truck drivers' wages           |             |             |
| Vacation wages                 | 1,919.51    |             |
| Personnel benefits             | 2,129.44    | 51,468.18   |
|                                |             | 12,216.15   |
| Total Commissions              |             |             |
| Bottle Expenses:               |             |             |
| Bottle deposit                 | \$ 114.33   |             |
| Bottle loss                    | 799.80      |             |
| Foreign bottles                |             |             |
| Bottle expense                 | 277.90      |             |
| Bottle allowance               | 3,502.50    | 4,465.87    |
| Other Expenses:                |             |             |
| Sales contest expense          | \$ 800.00   |             |
| Advertising                    | 1,003.95    |             |
| Bad debts                      |             |             |
| Bad debt collections           |             |             |
| Building repairs               | 48.30       |             |
| Depreciation                   | 368.44      |             |
| Donations                      |             |             |
| Equipment repairs              | 182.99      |             |
| Expense transfers              |             |             |
| Ice and refrigeration          | 322.04      |             |
| Illinois occupation tax        |             |             |
| Insurance                      | 5.71        |             |
| Laundry                        | 7.69        |             |
| License                        | 268.58      |             |
| Membership and dues            |             |             |
| Miscellaneous expenses         | 849.20      |             |
| Office supplies and expense    | 22.93       |             |
| Operating supplies and expense | 56.17       |             |
| Painting                       |             |             |
| Rentals                        | 10.00       |             |
| Taxes                          | 423.30      |             |
| Telephone                      | 266.53      |             |
| Trade expense                  | 160.00      |             |
| Utilities                      | 669.17      |             |
| Vending machine expense        | 42.00       |             |
| Store license                  | 6.00        | 6,613.00    |
| Total Expense                  |             | \$84,657.55 |
| Number of Route Days           |             | 1,507       |
| Cost per Route Day             |             | \$56.18     |

## Schedule 6—Continued

(fol. 989)

## References

1. Source: Summary of Sales, Delivery, and Collection Expenses (Form #50), November 1954.
2. Reference: Mr. J. Curtin—Elston Division  
Mr. A. Block—Forest Division  
Mr. W. Paeth—South Division.
3. Reference: Mr. R. Butthman—Sales Department.
4. Source: Route book, Route #1177 Elston Division, November 1954.
5. Source: Route book, Route #1177 Elston Division, November 1954.
6. Source: Product Cost to Divisions, November 1954. (Forms #10, 11, 11A, 11B, 11C, 11D, 11E, 11F, 13, 14, 15B, 16B, 17A, 18).
7. Source: (a) Wholesale List Prices (Form #M 95 2), Revision #190, November 5, 1954.  
(b) Chain Store Price List (Form #M 54), Revision #212, November 46, 1954.
8. Source of discount rate: Resale Store Discounts (Form #217-5M), November 1954.

[Vol. 999] IN UNITED STATES DISTRICT COURT

## DISCOUNT SCHEDULE 1

## BOWMAN EXHIBIT 5

## Bowman Dairy Company

## Resale Store Discount Schedule

Effective Monday, January 19, 1953

Basic discount 3% on all purchases of fresh milk products listed within

## Graduated Resale Store Discount Schedule

A graduated discount on all purchases of fresh milk products as hereinafter listed, over and above an average of 30 converted quarts per day, will be paid as follows:

| Average<br>Converted<br>Quarts<br>per Day | Percent of<br>Discount | Average<br>Converted<br>Quarts<br>per Day | Percent of<br>Discount |
|---|------------------------|---|------------------------|
| 30 to 40                                  | 3 0% to 3 5%           | 220 to 230                                | 6 2% to 6 3%           |
| 40 to 50                                  | 3 5% to 4 0            | 230 to 240                                | 6 3% to 6 4            |
| 50 to 60                                  | 4 0% to 4 2            | 240 to 250                                | 6 4% to 6 5            |
| 60 to 70                                  | 4 2% to 4 4            | 250 to 260                                | 6 5% to 6 6            |
| 70 to 80                                  | 4 4% to 4 6            | 260 to 270                                | 6 6% to 6 7            |
| 80 to 90                                  | 4 6% to 4 8            | 270 to 280                                | 6 7% to 6 8            |
| 90 to 100                                 | 4 8% to 5 0            | 280 to 290                                | 6 8% to 6 9            |
| 100 to 110                                | 5 0% to 5 1            | 290 to 300                                | 6 9% to 7 0            |
| 110 to 120                                | 5 1% to 5 2            | 300 to 310                                | 7 0% to 7 1            |
| 120 to 130                                | 5 2% to 5 3            | 310 to 320                                | 7 1% to 7 2            |
| 130 to 140                                | 5 3% to 5 4            | 320 to 330                                | 7 2% to 7 3            |
| 140 to 150                                | 5 4% to 5 5            | 330 to 340                                | 7 3% to 7 4            |
| 150 to 160                                | 5 5% to 5 6            | 340 to 350                                | 7 4% to 7 5            |
| 160 to 170                                | 5 6% to 5 7            | 350 to 360                                | 7 5% to 7 6            |
| 170 to 180                                | 5 7% to 5 8            | 360 to 370                                | 7 6% to 7 7            |
| 180 to 190                                | 5 8% to 5 9            | 370 to 380                                | 7 7% to 7 8            |
| 190 to 200                                | 5 9% to 6 0            | 380 to 390                                | 7 8% to 7 9            |
| 200 to 210                                | 6 0% to 6 1            | 390 to 400                                | 7 9% to 8 0            |
| 210 to 220                                | 6 1% to 6 2            | 400 and over                              | 8 0                    |

These discounts in excess of but including the basic discount will be paid upon the following conditions:

1. Purchase of an average of 30 or more converted quarts of Bowman Milk and Sta-Slim per normal delivery day.
2. No refrigerator arrangement by the Bowman driver-salesman.
3. The store customer must expedite the driver-salesman in obtaining the order and collecting for it.

Discounts will be computed as follows:

1. Your monthly purchases of Bowman Milk and Sta-Slim will be converted to quarts: This total will be divided by the number of days during the month upon which Bowman Dairy Company makes store deliveries. The result becomes your average converted quarts per day.
2. From your average converted quarts per day your discount is determined from the discount schedule above.
3. Your discount rate for the month will then be applied to your total purchases of Bowman Dairy Company's fresh milk products, which shall include the following:

Milk, including quarts, half-gallons and gallons.

Golden Guernsey

Cream, including Half & Half, Rich Cream and Whipping Cream.

Quick-Whip

Sour Cream

Buttermilk

Dari-Rich

Energee

Sta-Slim

Yogurt

Egg Nog

Strawberry Drink

Certified Products

Cottage Cheese

Discount checks will be mailed to you during the month following the month upon which your discount rate is computed.

Bowman Dairy Company.

[fol. 991] IN UNITED STATES DISTRICT COURT

## DISCOUNT SCHEDULE 2

## BOWMAN EXHIBIT 6

Bowman Dairy Company

Resale Store Discount Schedule

Effective Friday, July 10, 1953

Basic discount 5.5% on all purchases of fresh milk products listed within

## Graduated Resale-Store Discount Schedule

A graduated discount on all purchases of fresh milk products as hereinafter listed, over and above an average of 50 converted quarts per day, will be paid as follows:

| Average<br>Converted<br>Quarts<br>per Day | Percent of<br>Discount | Average<br>Converted<br>Quarts<br>per Day | Percent of<br>Discount |
|---|------------------------|---|------------------------|
| 50 to 60                                  | 5 5% to 5 7%           | 200 to 210                                | 8 0% to 8 1%           |
| 60 to 70                                  | 5 7 to 5 9             | 210 to 220                                | 8 1 to 8 2             |
| 70 to 80                                  | 5 9 to 6 1             | 220 to 230                                | 8 2 to 8 3             |
| 80 to 90                                  | 6 1 to 6 3             | 230 to 240                                | 8 3 to 8 4             |
| 90 to 100                                 | 6 3 to 6 5             | 240 to 250                                | 8 4 to 8 5             |
| 100 to 110                                | 6 5 to 6 7             | 250 to 260                                | 8 5 to 8 6             |
| 110 to 120                                | 6 7 to 6 9             | 260 to 270                                | 8 6 to 8 7             |
| 120 to 130                                | 6 9 to 7 1             | 270 to 280                                | 8 7 to 8 8             |
| 130 to 140                                | 7 1 to 7 3             | 280 to 290                                | 8 8 to 8 9             |
| 140 to 150                                | 7 3 to 7 5             | 290 to 300                                | 8 9 to 9 0             |
| 150 to 160                                | 7 5 to 7 6             | 300 to 310                                | 9 0 to 9 1             |
| 160 to 170                                | 7 6 to 7 7             | 310 to 320                                | 9 1 to 9 2             |
| 170 to 180                                | 7 7 to 7 8             | 320 to 330                                | 9 2 to 9 3             |
| 180 to 190                                | 7 8 to 7 9             | 330 to 340                                | 9 3 to 9 4             |
| 190 to 200                                | 7 9 to 8 0             | 340 to 350                                | 9 4 to 9 5             |

These discounts in excess of but including the basic discount will be paid upon the following conditions:

1. Purchase of an average of 50 or more converted quarts of Bowman milk products per normal delivery day.
2. The store customer must expedite the driver-salesman in obtaining the order and collecting for it.

Discounts will be computed as follows:

1. Your monthly purchases of Bowman milk products will be converted to quarts. This total will be divided by

the number of days during the month upon which Bowman Dairy Company makes store deliveries. The result becomes your average converted quarts per day.

2. From your average converted quarts per day your discount is determined from the discount schedule above.
3. Your discount rate for the month will then be applied to the dollar value of your total purchases of Bowman Dairy Company's milk products, which shall include the following:

Milk, including quarts, half-gallons and gallons.

Golden Guernsey

Cream, including Half & Half, Rich Cream and Whipping Cream.

Quick-Whip

Sour Cream

Buttermilk

Dari-Rich

Energee

Sta-Slim

Yogurt

Egg Nog

Strawberry Drink

Certified Products

Cottage Cheese

Discount checks will be mailed to you during the month following the month upon which your discount rate is computed.

**Bowman Dairy Company.**

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## DISCOUNT SCHEDULE 3

## BOWMAN EXHIBIT 7

## Resale Store Discount Schedule

Effective Sunday, Nov. 1, 1953

Basic discount 3% on all purchases of fresh milk products listed within

## Graduated Resale Store Discount Schedule

A graduated discount on all purchases of fresh milk products as hereinafter listed, over and above an average of 50 converted quarts per day, will be paid as follows:

| Average<br>Converted<br>Quarts<br>per Day | Percent of<br>Discount | Average<br>Converted<br>Quarts<br>per Day | Percent of<br>Discount |
|---|------------------------|---|------------------------|
| 1 to 49                                   | 3%                     | 200 to 210                                | 8 0% to 8 1%           |
| 50 to 60                                  | 5 5% to 5 7%           | 210 to 220                                | 8 1% to 8 2%           |
| 60 to 70                                  | 5 7% to 5 9%           | 220 to 230                                | 8 2% to 8 3%           |
| 70 to 80                                  | 5 9% to 6 1%           | 230 to 240                                | 8 3% to 8 4%           |
| 80 to 90                                  | 6 1% to 6 3%           | 240 to 250                                | 8 4% to 8 5%           |
| 90 to 100                                 | 6 3% to 6 5%           | 250 to 260                                | 8 5% to 8 6%           |
| 100 to 110                                | 6 5% to 6 7%           | 260 to 270                                | 8 6% to 8 7%           |
| 110 to 120                                | 6 7% to 6 9%           | 270 to 280                                | 8 7% to 8 8%           |
| 120 to 130                                | 6 9% to 7 1%           | 280 to 290                                | 8 8% to 8 9%           |
| 130 to 140                                | 7 1% to 7 3%           | 290 to 300                                | 8 9% to 9 0%           |
| 140 to 150                                | 7 3% to 7 5%           | 300 to 310                                | 9 0% to 9 1%           |
| 150 to 160                                | 7 5% to 7 6%           | 310 to 320                                | 9 1% to 9 2%           |
| 160 to 170                                | 7 6% to 7 7%           | 320 to 330                                | 9 2% to 9 3%           |
| 170 to 180                                | 7 7% to 7 8%           | 330 to 340                                | 9 3% to 9 4%           |
| 180 to 190                                | 7 8% to 7 9%           | 340 to 350                                | 9 4% to 9 5%           |
| 190 to 200                                | 7 9% to 8 0%           |   |                        |

These discounts in excess of but including the basic discount will be paid upon the following conditions:

1. Purchase of an average of 50 or more converted quarts of Bowman milk products per normal delivery day.
2. The store customer must expedite the driver-salesman in obtaining the order and collecting for it.

Discounts will be computed as follows:

1. Your monthly purchases of Bowman milk products will be converted to quarts. This total will be divided by the number of days during the month upon which Bow-

man Dairy Company makes store deliveries. The result becomes your average converted quarts per day.

2. From your average converted quarts per day your discount is determined from the discount schedule above.
3. Your discount rate for the month will then be applied to the dollar value of your total purchases of Bowman Dairy Company's milk products, which shall include the following:

Milk, including quarts, half-gallons and gallons.

Golden Guernsey

Cream, including Half & Half, Rich Cream and Whipping Cream.

Quick-Whip

Sour Cream

Buttermilk

Dari-Rich

Energee

Sta-Slim

Yogurt

Egg Nog

Strawberry Drink

Certified Products

Cottage Cheese

Discount checks will be mailed to you during the month following the month upon which your discount rate is computed.

Bowman Dairy Company.



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## DISCOUNT SCHEDULE 4

## BOWMAN EXHIBIT 8

## Resale Store Discount Schedule

Effective Monday, November 16, 1953

## Graduated Resale Store Discount Schedule

A discount on all purchases of fresh milk products as hereinafter listed, will be paid as follows:

| Average<br>Converted<br>Quarts<br>per Day | Percent of<br>Discount |
|---|------------------------|
| 0 to 24                                   | 0%                     |
| 25 to 49                                  | 3%                     |
| 50 to 65                                  | 4%                     |
| 65 to 150                                 | 4% to 5%               |
| 150 to 299                                | 5% to 6 1/2%           |
| 300 and over                              | 7%                     |

Discounts may be changed from time to time by notice as market conditions vary.

These discounts will be paid upon the following conditions:

1. Purchase of an average of 25 or more converted quarts of Bowman milk products per normal delivery day.
2. The store customer must expedite the driver-salesman in obtaining the order and collecting for it.

Discounts will be computed as follows:

1. Your monthly purchases of Bowman milk products will be converted to quarts. This total will be divided by the number of days during the month upon which Bowman Dairy Company makes store deliveries. The result becomes your average converted quarts per day.
2. From your average converted quarts per day your discount is determined from the discount schedule above.
3. Your discount rate for the month will then be applied to the dollar value of your total purchases of Bowman

Dairy Company's milk products, which shall include the following:

Milk, including quarts, half-gallons and gallons.  
Golden Guernsey  
Cream, including Half & Half, Rich Cream and Whipping Cream.  
Quick-Whip  
Sour Cream  
Buttermilk  
Dari-Rich  
Energee  
Sta-Slim  
Yogurt  
Egg Nog  
Strawberry Drink  
Certified Products  
Cottage Cheese

Discount checks will be mailed to you during the month following the month upon which your discount rate is computed.

Bowman Dairy Company.

[fol. 994] IN UNITED STATES DISTRICT COURT

DISCOUNT SCHEDULE 5

BOWMAN EXHIBIT 9

Resale Store Discount Schedule

Effective Wednesday, December 9, 1953

Graduated Resale Store Discount Schedule

A discount on all purchases of fresh milk products as hereinafter listed, will be paid as follows:

| Average<br>Converted<br>Milk<br>Quarts<br>per Day | Percent of<br>Discount |
|---|------------------------|
| 0 to 24   | 0¢                     |
| 25 to 150   | 2¢ to 3¢               |
| 150 to 235  | 3¢ to 4¢               |
| 235 to 300  | 4¢ to 5¢               |
| Over 300  | 5¢                     |

Discounts may be changed from time to time by notice as market conditions vary.

These discounts will be paid upon the following conditions:

1. Purchase of an average of 25 or more converted quarts of Bowman milk per normal delivery day.
2. The store customer must expedite the driver-salesman in obtaining the order and collecting for it.

Discounts will be computed as follows:

1. Your total monthly purchases of Bowman milk in gallons,  $\frac{1}{2}$  gallons and quarts will be converted to quarts. This total will be divided by the number of days during the month in which Bowman Dairy Company makes store deliveries. The result becomes your average converted quarts per day.
2. From your average converted quarts per day your discount is determined from the discount schedule above.
3. Your discount rate for the month will then be applied to the dollar value of your total purchases of Bowman

Dairy Company's milk products, which shall include the following:

Milk, including quarts, half-gallons and gallons.

Golden Guernsey

Cream, including Half & Half, Rich Cream and Whipping Cream.

Quick-Whip

Sour Cream

Buttermilk

Dari-Rich

Energiee

Sta-Slim

Yogurt

Egg Nog

Strawberry Drink

Certified Products

Cottage Cheese

Discount checks will be mailed to you during the month following the month upon which your discount rate is computed.

Bowman Dairy Company.

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## DISCOUNT SCHEDULE 6

## BOWMAN EXHIBIT 10

Bowman Dairy Company

Resale Store Discount Schedule

Effective Monday, February 8, 1954

## Graduated Resale Store Discount Schedule

| Average<br>Converted<br>Points<br>per Day | Percent of<br>Discount | Average<br>Converted<br>Points<br>per Day | Percent of<br>Discount |
|---|------------------------|---|------------------------|
| 0 to 10                                   | 2 0% to 2 1%           | 150 to 160                                | 3 5% to 3 6%           |
| 10 to 20                                  | 2 1% to 2 2%           | 160 to 170                                | 3 6% to 3 7%           |
| 20 to 30                                  | 2 2% to 2 3%           | 170 to 180                                | 3 7% to 3 8%           |
| 30 to 40                                  | 2 3% to 2 4%           | 180 to 190                                | 3 8% to 3 9%           |
| 40 to 50                                  | 2 4% to 2 5%           | 190 to 200                                | 3 9% to 4 0%           |
| 50 to 60                                  | 2 5% to 2 6%           | 200 to 210                                | 4 0% to 4 1%           |
| 60 to 70                                  | 2 6% to 2 7%           | 210 to 220                                | 4 1% to 4 2%           |
| 70 to 80                                  | 2 7% to 2 8%           | 220 to 230                                | 4 2% to 4 3%           |
| 80 to 90                                  | 2 8% to 2 9%           | 230 to 240                                | 4 3% to 4 4%           |
| 90 to 100                                 | 2 9% to 3 0%           | 240 to 250                                | 4 4% to 4 5%           |
| 100 to 110                                | 3 0% to 3 1%           | 250 to 260                                | 4 5% to 4 6%           |
| 110 to 120                                | 3 1% to 3 2%           | 260 to 270                                | 4 6% to 4 7%           |
| 120 to 130                                | 3 2% to 3 3%           | 270 to 280                                | 4 7% to 4 8%           |
| 130 to 140                                | 3 3% to 3 4%           | 280 to 290                                | 4 8% to 4 9%           |
| 140 to 150                                | 3 4% to 3 5%           | 290 to 300                                | 4 9% to 5 0%           |

Discounts may be changed from time to time by notice as market conditions vary.

These discounts will be paid upon the following conditions:

1. Purchase of an average of one or more converted points of Bowman milk products per normal delivery day.
2. The store customer must expedite the driver-salesman in obtaining the order and collecting for it.

Discounts will be computed as follows:

1. Your total monthly purchases of Bowman milk products will be converted to points. This total will be divided by the number of days during the month in which Bowman Dairy Company makes store deliveries. The result becomes your average points per day.

2. From your average points per day your discount is determined from the discount schedule above.
3. Your discount rate for the month will then be applied to the dollar value of your total purchases of Bowman Dairy Company's milk products, which shall include the following:

Milk, including quarts, half-gallons and gallons

Golden Guernsey

Cream, including Half & Half, Rich Cream and Whipping Cream

Quick-Whip

Sour Cream

Buttermilk

Dari-Rich

Energee

Sta-Slim

Yogurt

Egg Nog

Strawberry Drink

Certified Products

Cottage Cheese

Discount checks will be mailed to you during the month following the month upon which your discount rate is computed.

Bowman Dairy Company.

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## DISCOUNT SCHEDULE 7

## BOWMAN EXHIBIT 11

## Bowman Dairy Company

## Resale Store Discount Schedule

## Graduated Resale Store Discount Schedule

| Average<br>Converted<br>Points<br>per Day | Percent of<br>Discount | Average<br>Converted<br>Point<br>(per Day) | Percent of<br>Discount |
|---|------------------------|--|------------------------|
| 0 to 10                                   | 2.0% to 2.4%           | 80 to 90                                   | 5.2% to 5.6%           |
| 10 to 20                                  | 2.4% to 2.8%           | 90 to 100                                  | 5.6% to 6.0%           |
| 20 to 30                                  | 2.8% to 3.2%           | 100 to 110                                 | 6.0% to 6.4%           |
| 30 to 40                                  | 3.2% to 3.6%           | 110 to 120                                 | 6.4% to 6.8%           |
| 40 to 50                                  | 3.6% to 4.0%           | 120 to 130                                 | 6.8% to 7.2%           |
| 50 to 60                                  | 4.0% to 4.4%           | 130 to 140                                 | 7.2% to 7.6%           |
| 60 to 70                                  | 4.4% to 4.8%           | 140 to 150                                 | 7.6% to 8.0%           |
| 70 to 80                                  | 4.8% to 5.2%           |  |                        |

Discounts may be changed from time to time by notice as market conditions vary.

These discounts will be paid upon the following conditions:

1. Purchase of an average of one or more converted points of Bowman milk products per normal delivery day.
2. The store customer must expedite the driver/salesman in obtaining the order and collecting for it.

Discounts will be computed as follows:

1. Your total monthly purchases of Bowman milk products will be converted to points. This total will be divided by the number of days during the month upon which Bowman Dairy Company make store deliveries. The result becomes your average points per day.
2. From your average points per day your discount is determined from the discount schedule above.
3. Your discount rate for the month will then be applied to the dollar value of your total purchases of Bowman Dairy Company's milk products, which shall include the following:

Milk, including quarts, half-gallons and gallons  
Golden Guernsey

Cream, including Half & Half, Rich Cream and Whip-  
ping Cream  
Quick-Whip  
Sour Cream  
Buttermilk  
Dari-Rich  
Energee  
Sta-Slim  
Yogurt  
Egg Nog  
Strawberry Drink  
Certified Products  
Cottage Cheese

Discount checks will be mailed to you during the month  
following the month upon which your discount rate is com-  
puted.

Bowman Dairy Company.



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## DISCOUNT SCHEDULE 8

## BOWMAN EXHIBIT 12

## Bowman Dairy Company

## Resale Store Discount Schedule

## Graduated Resale Store Discount Schedule

| Average<br>Converted<br>Points<br>per Day | Percent of<br>Discount | Average<br>Converted<br>Points<br>per Day | Percent of<br>Discount |
|---|------------------------|---|------------------------|
| 0 to 10                                   | 3 0% to 3 1%           | 80 to 90                                  | 5 6% to 5 8%           |
| 10 to 20                                  | 3 4% to 3 8%           | 90 to 100                                 | 5 8% to 6 0%           |
| 20 to 30                                  | 3 8% to 4 2%           | 100 to 110                                | 6 0% to 6 2%           |
| 30 to 40                                  | 4 2% to 4 6%           | 110 to 120                                | 6 2% to 6 4%           |
| 40 to 50                                  | 4 6% to 5 0%           | 120 to 130                                | 6 4% to 6 6%           |
| 50 to 60                                  | 5 0% to 5 2%           | 130 to 140                                | 6 6% to 6 8%           |
| 60 to 70                                  | 5 2% to 5 4%           | 140 to 150                                | 6 8% to 7 0%           |
| 70 to 80                                  | 5 4% to 5 6%           |   |                        |

Discounts may be changed from time to time by notice as market conditions vary.

These discounts will be paid upon the following conditions:

1. Purchase of an average of one or more converted points of Bowman milk products per normal delivery day.
2. The store customer must expedite the driver-salesman in obtaining the order and collecting for it.

Discounts will be computed as follows:

1. Your total monthly purchases of Bowman milk products will be converted to points. This total will be divided by the number of days during the month upon which Bowman Dairy Company make store deliveries. The result becomes your average points per day.
2. From your average points per day your discount is determined from the discount schedule above.
3. Your discount rate for the month will then be applied to the dollar value of your total purchases of Bowman Dairy Company's milk products, which shall include the following:

Milk, including quarts, half-gallons and gallons  
Golden Guernsey

Cream, including Half & Half, Rich Cream and Whip-  
 ping Cream  
 Quick Whip  
 Sour Cream  
 Buttermilk  
 Dari-Rich  
 Energiee  
 Sta-Slim  
 Yogurt  
 Egg Nog  
 Strawberry Drink  
 Certified Products  
 Cottage Cheese

Discount checks will be mailed to you during the month following the month upon which your discount rate is computed.

Bowman Dairy Company.

No. 8. Revised Discount Schedule Effective June 1, 1954 in conjunction with price decrease effective same date.

[fol. 998] IN UNITED STATES DISTRICT COURT

#### DISCOUNT SCHEDULE 9

BOWMAN EXHIBIT 13

#### Resale Store Discount Schedule

Effective Monday, January 2, 1956

#### Graduated Resale Store Discount Schedule

A discount on all purchases of fresh milk products as hereinafter listed, will be paid as follows:

| Average<br>Converted<br>Points<br>per Day | Percent of<br>Discount |
|---|------------------------|
| 0 to 24                                   | 0%                     |
| 25 to 90                                  | 2% to 3%               |
| 90 to 190                                 | 3% to 4%               |
| 190 to 300                                | 4% to 5%               |
| 300 to 355                                | 5% to 5½%              |
| 355 and over                              | 5½%                    |

Discounts may be changed from time to time by notice as market conditions vary.

These discounts will be paid upon the following conditions:

1. Purchase of an average of 25 or more converted points of Bowman milk products per normal delivery day.
2. The store customer must expedite the driver-salesman in obtaining the order and collecting for it.

Discounts will be computed as follows:

1. Your monthly purchases of Bowman milk products will be converted to points. This total will be divided by the number of days during the month upon which Bowman Dairy Company makes store deliveries. The result becomes your average converted points per day.
2. From your average converted points per day your discount is determined from the discount schedule above.
3. Your discount rate for the month will then be applied to the dollar value of your total purchases of Bowman Dairy Company's milk products, which shall include the following:

Milk, including quarts, half-gallons and gallons  
 Golden Guernsey  
 Cream, including Half & Half, Rich Cream and Whipping Cream  
 Quick-Whip  
 Sour Cream  
 Buttermilk  
 Dari-Rich  
 Energee  
 Sta-Slim  
 Yogurt  
 Egg Nog  
 Strawberry Drink  
 Certified Products  
 Cottage Cheese

Discount checks will be mailed to you during the month following the month upon which your discount rate is computed.

[fol. 999] IN UNITED STATES DISTRICT COURT

BOWMAN EXHIBIT No. 14

Discounts Schedule Tests

(March, 1955)

1. Route 1471.
2. Route 129.
3. Kroger Chain Store Discount.
4. A & P Chain Store Discount.

[fol. 999a] [File endorsement omitted.]

[fol. 1000] Stevenson, Jordan & Harrison, Inc.

Management Engineers and Consultants

19 West 44th Street, New York 36, N. Y.

205 W. Wacker Drive, Chicago 6, Ill.

779 Washington Street, Buffalo 3, N. Y.

Hanna Building, Cleveland 15, O.

New York 36, N. Y..

October 24, 1955.

Mr. Francis Kullman, Jr.,  
Bowman Dairy Company,  
140 West Ontario Street,  
Chicago 10, Illinois.

DEAR MR. KULLMAN:

Enclosed is a report concerning four tests of discount schedules which you asked us to make. They are:

1. Route 1471 (South Division)—March 1955.
2. Route 129 (South Division)—March 1955.
3. Kroger chain store discount—March 1955.
4. A & P chain store discount—March 1955.

The procedure for testing these two routes and two chain store discounts was that outlined in the *Manual For Establishing And Testing A Store Discount Schedule*.

You will notice that in establishing the schedule, volume was expressed on a point basis. That is an industry-wide

practice of relating many dairy items to a common basis. [fol. 1001] It is convenient for a dairy to use in administering its distribution system, and easy for the customer to understand. Since we cannot predict and plan for all of the possible combinations of purchased items and quantities available to customers, the point method is a necessary basis for prior measurement. However, there are some inconsistencies in point values, e.g., a quart of milk is one point while a quart of cream is four points, although their delivery costs are equal. This basis is inadequate for an accurate and comprehensive test of an actual previous transaction. Therefore, the actual total product volume and mix was the basis for computing delivery costs for regular delivery practices, platform costs, discounts, and percent of margin returned on each customer's transaction.

The cost calculations show that the lower net prices (higher discounts) to the chain store outlets on Routes 129 and 1471, when compared individually to the other stores on those routes, do not exceed the effect of cost differences resulting from greater volume and fewer delivery services. [fol. 1002] Cost calculations also substantiate the general discount of 11.00% related to the A & P and Kroger chains.

Details are shown in the body of the report.

Respectfully submitted, Stevenson, Jordan & Harrison, Inc., A. J. Bergfeld.

AJB:ak.

[fol. 1003]

## CHAPTER I

[fol. 1004] I. Test of Routes  $\pm$ 129 and  $\pm$ 1471 (South Division)

These routes were tested in the same manner as described previously in the *Manual For Establishing And Testing A Store Discount Schedule*.

For each store on these routes, all deliveries during the week of March 14-19, 1955 were included in the study. This accounted for variations in order size throughout a weekly period.

Each customer's actual volume and product mix were used as the basis for computing delivery cost, platform costs, and list prices.

Delivery costs were based on the regular services available and generally provided to the type of store. Since the driver and his equipment must be prepared to perform any or all of the group of services set up for independent stores, the cost of that group is calculated as part of the delivery cost, and is incorporated into the discount schedule. This includes daily cash payment and the optional customer services beyond a sidewalk or floor delivery. Conversely, only the essential delivery services are provided to chain store outlets. It is understood that additional time is considered unavailable to them and furthermore, [fol. 1005] that the store manager will expedite delivery by not causing the route driver serious delays. (1)

This difference in delivery time has been built into the discount schedule and is the basis for calculating delivery costs for customers on routes  $\pm 129$  and  $\pm 1471$ .

An example is shown for Mr. S. Grzywna, route  $\pm 1471$ . During this week he had six deliveries and purchased the following quantities: (2)

| Product & Container           |           | No. of<br>Units | No. of<br>Cases |
|-------------------------------|-----------|-----------------|-----------------|
| (G) Glass                     | (F) Fiber |                 |                 |
| $\frac{1}{2}$ gallon—Milk     | (F)       | 46              | 3 83            |
| Quart—Milk                    | (F)       | 179             | 7 45            |
| Quart—Sta-Slim                | (F)       | 8               | 0 33            |
| Pint—Half & Half Cream        | (F)       | 31              | 0 89            |
| Quart—Buttermilk              | (F)       | 9               | 0 38            |
| Quart—Dari-Rich               | (F)       | 2               | 0 08            |
| $\frac{1}{2}$ pint—Dari-Rich  | (F)       | 24              | 0 40            |
| $\frac{1}{2}$ pint—Sour Cream | (F)       | 12              | 0 20            |
| Whip Dispenser                | (F)       | 4               | 0 07            |
| Cheese Containers             | (F)       | 3               | 0 08            |
| Quart—Milk                    | (G)       | 30              | 2 50            |
| Gallon—Milk                   | (G)       | 30              | 7 50            |
| $\frac{1}{2}$ gallon—Milk     | (G)       | 16              | 2 67            |
| Pound—Butter                  |           | 15              | 0 63            |
| Dozen—Eggs                    |           | 15              | 0 63            |
| Totals                        |           | 424             | 27 61           |

[fol. 1005] Mr. Grzywna received necessary and optional services and paid his bill daily by cash. Applying the time standards (see Appendix A) for this type of service and for the volume delivered resulted in a total delivery time for the week of 136.87 minutes. (See following table)

In this same period, the A & P chain store outlet on the same route also had six deliveries and its purchase orders totaled 1,241 units and 92.77 cases. (3)

This store received only the necessary delivery services. When standard time data was applied for this service and volume delivered, delivery time totaled 242.42 minutes. (See following table)

Delivery Time to Mr. Grzywna and to A & P  
Route #1471 (March 15-20, 1955)

| Work Element                           | Calculated Standard Time |        |
|--|--------------------------|--------|
|  | Mr. Grzywna              | A & P  |
| Get order .....                        | 8 22                     | 8 22   |
| Delay to get order .....               | 0 66                     | 0 66   |
| Select merchandise .....               | 17 17                    | 48 43  |
| Unload order .....                     | 2 54                     | 8 53   |
| Deliver .....                          | 11 16                    | 30 37  |
| Make out delivery slip .....           | 12 84                    | 12 84  |
| Have delivery slip checked .....       | 1 14                     | 1 14   |
| Route bookkeeping .....                | 3 78                     | 3 78   |
| Sort glass bottles .....               | 1 90                     | 3 93   |
| Pick up empties .....                  | 7 56                     | 22 54  |
| [tol. 1007]                            |                          |        |
| Load empties on truck .....            | 3 01                     | 10 11  |
| Arrange load .....                     | 10 42                    | 34 97  |
| *Drive on route .....                  | 25 08                    | 25 08  |
| Load cases on truck at plant .....     | 3 95                     | 13 27  |
| Unload cases from truck at plant ..... | 5 53                     | 18 55  |
| Customer services .....                | 13 99                    |        |
| Collect .....                          | 7 14                     |        |
| Delay to collect .....                 | 0 78                     |        |
| Total Standard Time (minutes) .....    | 136 87                   | 242 42 |

\* 18 stops ÷ 16.0 miles on route = 1.13 stops per mile.

4.7 minutes per mile (see graph, appendix A) x 16.0 miles = 75.2 minutes.

75.2 minutes ÷ 18 customers = 4.18 minutes per customer per day

Delivery time is calculated similarly for all stops; total time for each is:

| Route #1471<br>Customer   | Total<br>Units | Total<br>Cases | Total<br>Delivery<br>Time |
|---------------------------|----------------|----------------|---------------------------|
| S. Grzywna .....          | 424            | 27 64          | 136 87                    |
| St. Michael School .....  | 1,602          | 26 75          | 145 11                    |
| St. Michael Convent ..... | 3              | 0 75           | 33 03                     |
| S. Mroz .....             | 207            | 8 19           | 90 62                     |
| Brija .....               | 231            | 11 40          | 97 75                     |
| Roubik .....              | 90             | 7 08           | 85 05                     |
| E. Nykrin .....           | 343            | 16 91          | 112 60                    |
| R. Hoffman .....          | 84             | 3 04           | 79 34                     |
| U.A.R. Co. ....           | 551            | 15 46          | 107 78                    |



[fol. 1008]

| Route #1471<br>Customer       | Total<br>Units | Total<br>Cases | Total<br>Delivery<br>Time |
|-------------------------------|----------------|----------------|---------------------------|
| A. Ahlberg                    | 57             | 2 63           | 78 07                     |
| S. Tomaskovic                 | 519            | 35 57          | 154 93                    |
| A & P                         | 1,241          | 92 77          | 242 42                    |
| Goldblatt Bros.               | 995            | 51 66          | 192 34                    |
| G. Psomakos                   | 1,208          | 80 13          | 265 91                    |
| G. Forecki                    | 68             | 3 59           | 79 70                     |
| J. Smulski                    | 232            | 9 56           | 94 26                     |
| J. Drabek                     | 237            | 16 69          | 108 75                    |
| J. Fojtik                     | 40             | 1 67           | 64 34                     |
| J. Schuch                     | 17             | 0 63           | 50 32                     |
| Total Delivery Time (minutes) |                |                | 2 219 19                  |

In March, the cost per route day at the South Division was \$65.65. (see schedule 1). (4) For Route #471, the cost per customer service minute was \$0.1775. ( $\$65.65 \times 6/2219.19$ ).

Since butter, eggs, and bulk items are not included in determining the discount rate or calculating the dollar discount, the variable delivery time for those products was deducted from the previous totals. The last few steps in the calculations are as follows:

1. Deduct appropriate delivery time for butter, eggs, and bulk products from the total standard time for all products.
2. Multiply the revised delivery time by the route cost rate and add \$0.115 per week for store license.
3. Determine total platform cost for all products, excluding butter, eggs and bulk.

[fol. 1009] 4. Determine total list price for all products, excluding butter, eggs and bulk.

5. Using actual discount rate earned by each customer in March, calculate discount on this week's sales, excluding butter, eggs and bulk.
6. Subtract the sum of delivery cost, platform cost, and discount from the total list price: This is the gross margin.
7. Express the gross margin as a percentage of net price (list price less discount). Compare these percentages for different customers.

For Mr. Grzywina and the A & P outlet, these calculations are:

|  | GRZYWINA          | A & P             |
|--|-------------------|-------------------|
| Total delivery time                                    | 136.87            | 242.42            |
| Less: delivery time for butter, eggs and bulk products | 3.50              |                   |
| Revised total delivery time                            | 133.37            | 242.42            |
| Total delivery cost, including license                 | \$ 23.79          | \$ 43.14          |
| Total platform cost (5)                                | \$ 63.62          | \$ 243.28         |
| Total list price (6)                                   | \$112.65          | \$126.30          |
| Total discount (7)                                     | \$ 46.56 (5 8.2%) | \$ 46.89 (11.00%) |
| Gross margin   | \$ 18.68          | \$ 92.99          |
| Net price (list price - discount)                      | \$106.09          | \$179.41          |
| % gross margin to net price                            | 17.6%             | 24.5%             |

These calculations for every stop on the route are shown in Schedule 2.

[fol. 1010] The calculations show that in every case except one (Goldblatt Brothers), the lower net price to the A & P outlet is substantiated by its higher gross margin. In the Goldblatt A & P comparison, the gross margin on the A & P transaction is only 0.1% lower than expected, based on the discounts rebated to each.

The same calculations have also been done for route #129. The results of this test are shown in Schedule 3. In this case, when the A & P outlet and Kroger outlet are each compared individually with other stores on the route, their lower net prices are substantiated by cost differences; i. e., the store with the lower net price returned the higher gross margin percentage.

[fol. 1011]

## CHAPTER II

[fol. 1012] II. Test of Kroger and A & P Chain Store Discounts

The test of the chain store discounts was based on the Minimum Profit-Maximum Discount Line. At any volume point along that line, the gross margin on the chain store transaction (or transaction with any other group of stores receiving similar limited service) is the same as the gross margin on an independent store transaction. This line of equal gross margins determines the maximum discount that can be rebated. As long as the store receiving the lower

net price returns an equal or greater gross margin than the store receiving the higher net price, the cost savings passed on to the former have not exceeded those accruing from greater volume and/or fewer regular delivery services to the chains.

The calculations necessary to establish the Minimum Profit-Maximum Discount Line followed those outlined in detail previously in the *Manual For Establishing And Testing A Store Discount Schedule*.

The cost calculations were kept current and realistic. Standard time data (see Appendix A) was applied to the services rendered at various volume levels to determine total delivery time. A representative portion of volume delivered was considered to be in glass bottles in order to [fol. 1013] include the driver's time for handling bottles on the route. A representative time for driving between customers was included in delivery cost (8). Route costs (9) and platform costs (10), (cost of merchandise available for delivery), for March 1955 were also used in arriving at the total cost per unit at various volume levels. The margin remaining after subtracting the total unit cost from list price was expressed as a percentage of price. Schedules four and five show this margin for independent and chain stores at various order sizes.

The following example for a volume of 100 average daily points illustrates the final steps in establishing the Minimum Profit-Maximum Discount line for chain stores:

|  |         |
|--|---------|
| Maximum available margin—Independent store     | 17.66%  |
| Less: Rebated discount—March discount schedule | 6.00%   |
| Gross Margin remaining                         | 11.66%  |
| Maximum available margin—chain store           | 21.76%  |
| Less: Gross Margin—Independent store           | *11.66% |
| Maximum discount                               | 10.10%  |

---

\* This is the minimum margin for chain store transactions.

At this particular daily volume, a chain store outlet does not earn more than a 10.10% discount of list price. See Schedule six for maximum discount at all volume levels.

[fol. 1014] This illustration demonstrates that some chain outlets do not earn a full 11.00% discount. Those which purchase less than approximately 170 points per day are in this category. On the other hand, those exceeding 170 points per day and receiving the regular chain store services are entitled to more than 11.00%.

To test the discount to Kroger and A & P outlets, we have made a store-by-store analysis. For the week of March 14-19, 1955, purchase orders (11) were converted to points for each outlet served by Bowman in both chains. From the daily average points for each store and the calculated Minimum Profit-Maximum Discount Line, the allowable discount rate was determined. This rate, multiplied by the actual dollar volume during that week, was the earned discount for that store during March 14-19. This procedure repeated for every outlet in both chains determined the total discount that could have been rebated as a result of delivery cost savings.

For the Kroger chain, the results are as follows:

1. The 49 stores in Chicago, Evanston, Wilmette, Kenilworth, Winnetka, Glencoe, and Oak Park actually received a discount of \$2,866.99; they earned and could have received \$2,916.86.
2. The 38 stores in outlying areas actually received a discount of \$1,589.98; they earned and could have received \$1,620.25.

[fol. 1015] 3. Of the 49 stores, only 2 would have received less than an 11% discount, if billed individually.

4. Of the 38 stores in outlying areas, only 6 would have received less than 11% discount, if billed individually.

For the A & P chain, the results are as follows:

1. The 43 stores in Chicago, Evanston, Wilmette, Kenilworth, Winnetka, Glencoe, and Oak Park actually received a discount of \$3,065.27; they earned and could have received \$3,103.83.
2. The 33 stores in outlying areas actually received a discount of \$1,774.41; they earned and could have received \$1,800.26.
3. Of the 43 stores, only 1 would have received less than 11% discount, if billed individually.
4. Of the 33 stores in outlying areas, only 5 would have received less than 11% discount, if billed individually.

[fol. 1016]

## APPENDIX A

## Standard Time Allowances Developed From 1949 Time Studies

| Work Element           | No. of Customers      | No. of Units                   | No. of Cases            | Total Minutes | Standard Minutes                          |
|------------------------|-----------------------|--------------------------------|-------------------------|---------------|---|
| Get order              | 1 265                 |                                |                         | 174 96        | 1 37 (avg.) per cust.                     |
| Delay to get order     | 1 265                 |                                |                         | 137 45        | 11 (avg.) per cust.                       |
| Select merchandise     | 1 13 for 1st case and |                                | 48 for each additional  |               |   |
| Unload order           |                       |                                | 3428 24                 | 317 91        | 692 (avg.) per case                       |
| Deliver order          | 795 for 1st case and  |                                | 295 for each additional |               |   |
| Make out delivery slip | 1 089                 |                                |                         | 235 77        | 2 11 (avg.) per cust.                     |
| Have ship checked      | 1 089                 |                                |                         | 211 38        | 19 (avg.) per cust.                       |
| Route bookkeeping      | 739                   |                                |                         | 462 88        | 63 (avg.) per cust.                       |
| Sort glass bottles     |                       | 12 415                         |                         | 399 15        | 625 per glass bott.                       |
| Pick up empties        | 13 for 1st case and   |                                | 23 for each additional  |               |   |
| Load empties on truck  |                       |                                | 2530 00                 | 276 48        | 109 (avg.) per case                       |
| Arrange load           |                       |                                | 3428 24                 | 1292 38       | 377 (avg.) per case                       |
| Drive on route         |                       | (See separate table and graph) |                         |               |   |
| Load cases at plant    |                       |                                | 3281 90                 | 281 41        | 113 (avg.) per case                       |
| Unload cases at plant  |                       |                                | 1321 00                 | 268 90        | 20 (avg.) per case                        |
| Customer services      |                       | 66 574                         |                         | 2232 75       | 563 (avg.) per unit except A&P and Kruger |
| Collect                | 943                   |                                |                         | 1128 58       | 1 19 (avg.) per cash customer             |
| Delay to collect       | 943                   |                                |                         | 124 64        | 13 (avg.) per cash customer               |

## [fol. 1017] Analysis of 22 Time Studies For Unloading Cases at Plant

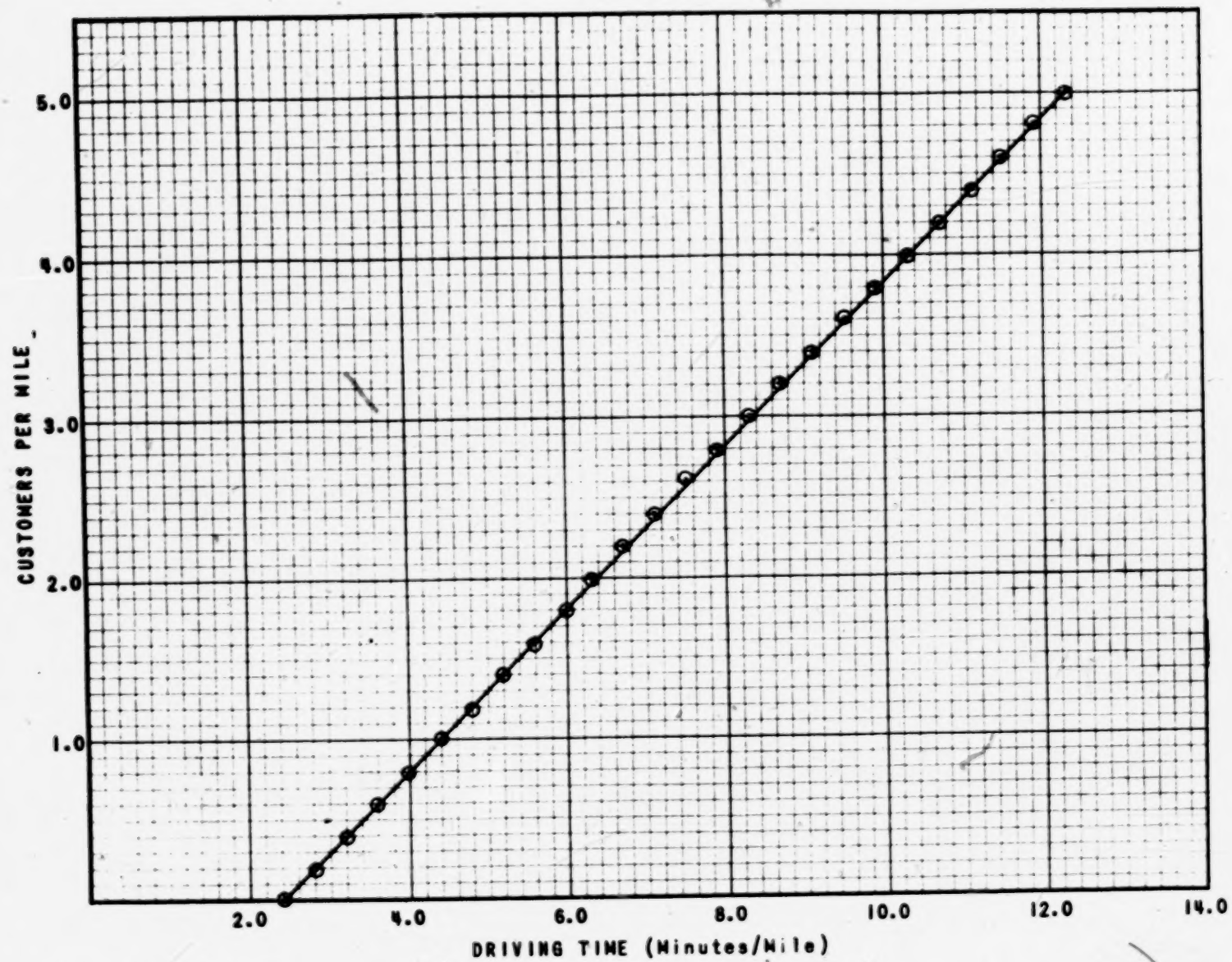
|                            | No. of Occurrences | No. of Cases | Total Minutes | Average Minutes Per Case |
|----------------------------|--------------------|--------------|---------------|--------------------------|
| Unload 1 case glass        | 142                | 142          | 30 49         |                          |
| Unload 2 cases glass       | 8                  | 16           | 2 96          |                          |
| Unload 1 case paper        | 48                 | 48           | 4 64          |                          |
| Unload 2 cases paper       | 12                 | 24           | 1 51          |                          |
| Unload 3 cases paper       | 4                  | 12           | 63            |                          |
| Unload 4 cases paper       | 10                 | 40           | 1 13          |                          |
| Unload 5 cases paper       | 140                | 700          | 9 64          |                          |
| Drag 1 case to truck door  |                    |              |               |                          |
| Drag 2 cases to truck door | 6                  |              | 1 78          |                          |
| Drag 3 cases to truck door | 4                  |              | 35            |                          |
| Drag 4 cases to truck door | 17                 |              | 3 20          |                          |
| Drag 5 cases to truck door | 139                |              | 14 45         |                          |
| Arrange cases to unload    | 5                  |              | 2 61          |                          |
| Drive to next van          | 70                 |              | 154 54        |                          |
| Drive to unload returns    | 22                 |              | 26 12         |                          |
| Unload returns             | 22                 | 35           | 13 91         |                          |
| Carry 1 case to other van  | 2                  | 2            | 82            |                          |
| Carry 2 cases to other van | 1                  | 2            | 62            |                          |
| Total                      |                    | 1 321        | 268 90        | 20 Standard              |

[fol. 1018]

**Bowman Dairy**  
**Driving Time--Store Route**  
**Minutes Per Mile (Gas Truck)**

| Customers<br>Per Mile | Minutes<br>Per Mile |
|-----------------------|---------------------|
| 0                     | 2 4                 |
| 0 2                   | 2 8                 |
| 0 4                   | 3 2                 |
| 0 6                   | 3 6                 |
| 0 8                   | 4 0                 |
| 1 0                   | 4 4                 |
| 1 2                   | 4 8                 |
| 1 4                   | 5 2                 |
| 1 6                   | 5 6                 |
| 1 8                   | 6 0                 |
| 2 0                   | 6 3                 |
| 2 2                   | 6 7                 |
| 2 4                   | 7 1                 |
| 2 6                   | 7 5                 |
| 2 8                   | 7 9                 |
| 3 0                   | 8 3                 |
| 3 2                   | 8 7                 |
| 3 4                   | 9 1                 |
| 3 6                   | 9 5                 |
| 3 8                   | 9 9                 |
| 4 0                   | 10 3                |
| 4 2                   | 10 7                |
| 4 4                   | 11 1                |
| 4 6                   | 11 5                |
| 4 8                   | 11 9                |
| 5 0                   | 12 3                |

BOWMAN DAIRY  
DRIVING TIME - GAS TRUCK  
STORE ROUTE



[fol. 1019]



[Vol. 1020]

## Schedule 1

South Division Expenses  
March, 1955

## Auto Expenses:

|                              |             |              |
|------------------------------|-------------|--------------|
| Auto Depreciation            | \$ 2 414 64 |              |
| Auto Gas and Oil             | 2 494 64    |              |
| Auto Insurance               | 896 98      |              |
| Auto License                 | 1 010 30    |              |
| Auto Repairs and Supplies    | 1 529 22    |              |
| Auto Repair and Upkeep Wages | 13 555 45   |              |
| Auto Rental Proportion       |             | \$ 11 904 23 |

## Salaries and Wages:

|                           |             |  |
|---------------------------|-------------|--|
| Delivery wages            | \$36 497 05 |  |
| Milkroom wages            | 13 368 41   |  |
| Solicitors' wages         | 4 126 94    |  |
| Office salaries and wages | 7 165 28    |  |
| Truck drivers' wages      | 527 15      |  |
| Vacation wages            | 3 382 50    |  |
| Personnel benefits        | 5 309 33    |  |

70 377 06

## Total Commissions:

17 298 81

## Bottle Expenses:

|                  |          |  |
|------------------|----------|--|
| Bottle deposit   | \$ 38 90 |  |
| Bottle loss      | 1 399 36 |  |
| Foreign bottles  |          |  |
| Bottle expense   | 367 14   |  |
| Bottle allowance | 4 849 44 |  |

6 654 84

## Other Expenses:

|                                |             |  |
|--------------------------------|-------------|--|
| Advertising                    | \$ 2 892 83 |  |
| Bad debts                      | 285 00      |  |
| Bad debt collections           |             |  |
| Building repairs               | 74 54       |  |
| Depreciation                   | 1 084 84    |  |
| Donations                      | 100 00      |  |
| Equipment                      | 174 92      |  |
| Expense transfers              | 215 40      |  |
| Ice and refrigeration          | 52 50       |  |
| Illinois occupation tax        |             |  |
| Insurance                      | 17 91       |  |
| Laundry                        | 24 50       |  |
| License                        | 372 67      |  |
| Membership and dues            | 105 52      |  |
| Miscellaneous expenses         | 1 824 94    |  |
| Office supplies and expense    | 282 61      |  |
| Operating supplies and expense | 84 52       |  |
| Painting                       | 55 77       |  |
| Rentals                        | 3 00        |  |
| Store license                  | 222 00      |  |
| Store merchandising            | 1 357 50    |  |
| Taxes                          | 609 09      |  |
| Telephone                      | 324 65      |  |
| Trade expense                  |             |  |
| Utilities                      | 1 033 85    |  |
| Vending machine expense        |             |  |

10 767 76

## Total Expense

\$117,082 70

Number of Route Days

1,782

Cost Per Route Day

\$ 65 65

{fol. 1021}

## SCHEDULE 2

Summary Table  
Route 129  
Week of March 14-19, 1955

Excluding Butter, Eggs and Bulk

| Customer                        | Total<br>Delivery<br>Time, All<br>Products<br>(Minutes) | Revised<br>Delivery<br>Time | Revised<br>Delivery<br>Cost, Incl.<br>Store<br>License<br>(11 1/2¢) | Total<br>Platform<br>Cost | Total<br>List<br>Price | Discount<br>On List<br>Price | Gross<br>Margin | Net<br>Price | Gross Margin<br>as a<br>Percent of<br>Net Price |
|---------------------------------|---|-----------------------------|---|---------------------------|------------------------|------------------------------|-----------------|--------------|---|
| Grzywna                         | 136 87  | 133 37                      | \$23 79   | \$63 62                   | \$112 65               | \$ 6 56 (5 82%)              | \$18 68         | \$106 09     | 17 6%   |
| St. Michael School (bulk stop)  | 145 11  |                             |   |                           |                        |                              |                 |              |   |
| St. Michael Convent (bulk stop) | 33 03   |                             |   |                           |                        |                              |                 |              |   |
| Mroz                            | 90 62   | 90 62                       | 16 20   | 23 19                     | 39 65                  | 1 63 (4 12%)                 | 1 37            | 38 02        | —   |
| Brija                           | 97 75   | 96 84                       | 17 30   | 29 43                     | 50 78                  | 2 30 (4 52%)                 | 1 75            | 48 48        | 3 6   |
| Roubik                          | 85 05   | 85 05                       | 15 21   | 14 08                     | 24 78                  | 0 93 (3 76%)                 | 5 44            | 23 85        | —   |
| Nykrin                          | 112 60  | 111 47                      | 19 90   | 46 07                     | 81 35                  | 4 18 (5 14%)                 | 11 20           | 77 17        | 14 5  |
| Hoffman                         | 79 34   | 78 84                       | 14 11   | 10 19                     | 17 95                  | 0 65 (3 60%)                 | 7 00            | 17 30        | —   |
| U. A. R. Co. (bulk stop)        | 107 78  |                             |   |                           |                        |                              |                 |              |   |
| Ahlberg                         | 78 07   | 78 03                       | 13 97   | 7 68                      | 12 65                  | 0 43 (3 40%)                 | 9 44            | 12 22        | —   |
| Tomaskovic                      | 154 93  | 154 93                      | 27 62   | 88 99                     | 153 81                 | 9 78 (6 36%)                 | 27 42           | 144 03       | 19 0  |
| Goldblatt Bros.                 | 192 34  | 192 34                      | 34 26   | 158 00                    | 278 65                 | 23 69 (8 50%)                | 62 70           | 254 96       | 24 6  |
| A & P                           | 242 42  | 242 42                      | 43 14   | 243 28                    | 426 30                 | 46 79 (11 00%)               | 92 99           | 379 41       | 24 5  |
| Psomakos                        | 265 91  | 264 10                      | 46 99   | 210 26                    | 367 28                 | 28 90 (7 87%)                | 81 13           | 338 38       | 24 0  |
| Forecki                         | 79 70   | 79 20                       | 14 17   | 7 87                      | 13 81                  | 0 46 (3 36%)                 | 8 69            | 13 35        | —   |
| Smulski                         | 94 26   | 89 73                       | 16 04   | 25 10                     | 44 90                  | 1 92 (4 28%)                 | 1 81            | 42 98        | 4 3   |
| Drabek                          | 108 75  | 107 96                      | 19 28   | 41 33                     | 72 03                  | 3 64 (5 06%)                 | 7 78            | 68 39        | 11 4  |
| Fojtik                          | 64 34   | 64 34                       | 11 54   | 4 85                      | 8 20                   | 0 27 (3 28%)                 | 8 49            | 7 93         | —   |
| Schuch                          | 50 32   | 50 32                       | 9 05  | 1 99                      | 3 70                   | 0 11 (3 08%)                 | 7 45            | 3 59         | —   |

2219 19

$$\text{Cost rate} = \frac{\$65.65 \times 6}{2219.19} = \$1.775 \text{ per route minute}$$

[fol. 1022]

## SCHEDULE 3

Summary Table  
Route 120  
Week of March 14-19, 1955

| Customer                       | Total<br>Delivery<br>Time, All<br>Products<br>(Minutes) | Revised<br>Delivery<br>Time | Revised<br>Delivery<br>Cost, Incl.<br>Store<br>License<br>(11-1/2¢) | Excluding Butter, Eggs and Bulk |                        |                              | Gross<br>Margin | Gross Margin<br>as a<br>Percent of |           |
|--------------------------------|---|-----------------------------|---|---------------------------------|------------------------|------------------------------|-----------------|------------------------------------|-----------|
|                                |   |                             |   | Total<br>Platform<br>Cost       | Total<br>List<br>Price | Discount<br>On List<br>Price |                 | Net<br>Price                       | Net Price |
| Oswald.....                    | 76 81   | 76 81                       | \$19.49   | \$ 16 11                        | \$ 28 19               | 8 1 12 (3 96%)               | \$ 8 53         | \$ 27 07                           | —         |
| Square Deal (Theodore).....    | 105 32  | 105 32                      | 26 68   | 52 75                           | 92 83                  | 5 11 (5 50%)                 | 8 29            | 87 72                              | 9 5%      |
| Reuther.....                   | 129 15  | 128 67                      | 32 57   | 72 19                           | 125 32                 | 7 72 (6 16%)                 | 12 81           | 117 60                             | 10 9%     |
| Union Food (Chismar).....      | 131 98  | 131 98                      | 33 40   | 82 28                           | 143 01                 | 8 90 (6 22%)                 | 18 43           | 134 11                             | 13 7%     |
| Jo - Jo Grill (bulk stop)..... | 59 81   |                             |   |                                 |                        |                              |                 |                                    |           |
| A & P.....                     | 241 15  | 241 15                      | 60 93   | 254 72                          | 447 35                 | 49 21 (11 00%)               | 82 49           | 82 49                              | 20 7%     |
| Nichols.....                   | 89 25   | 89 25                       | 22 62   | 30 68                           | 53 43                  | 2 16 (4 60%)                 | 2 33            | 50 97                              | —         |
| Charlie's (Goldenstern).....   | 197 31  | 197 31                      | 49 88   | 144 83                          | 255 05                 | 18 75 (7 35%)                | 41 59           | 236 30                             | 17 6%     |
| Kroger.....                    | 154 48  | 154 48                      | 39 07   | 151 45                          | 269 73                 | 29 67 (11 00%)               | 49 54           | 240 06                             | 20 6%     |
| Steve's (Martinet).....        | 100 27  | 100 27                      | 25 40   | 46 77                           | 82 71                  | 4 28 (5 18%)                 | 6 26            | 78 43                              | 8 0%      |
| Mac's (McDougall).....         | 106 11  | 105 26                      | 26 66   | 46 21                           | 81 20                  | 4 37 (5 38%)                 | 3 96            | 76 83                              | 5 2%      |
| Daggy.....                     | 91 37   | 91 05                       | 23 08   | 31 01                           | 54 26                  | 2 50 (4 60%)                 | 2 33            | 51 76                              | —         |
| Wilson.....                    | 78 85   | 78 85                       | 20 00   | 19 16                           | 33 65                  | 1 36 (4 04%)                 | 6 87            | 32 29                              | —         |
|                                | 1561.89   |                             |   |                                 |                        |                              |                 |                                    |           |

Cost rate = \$65.65 x 6 = \$.2522 per route minute

1561.89

[S.L. 1023]

## SCHEDULE 4

Determining a Discount Schedule for Independent Stores  
March, 1955\*

| Volume<br>(Quarts) | Total<br>Delivery<br>Cost | Delivery<br>Cost<br>Per<br>Quart | Delivery &<br>Platform<br>Cost Per<br>Quart | Maximum<br>Margin<br>Available<br>(List Price<br>Less Cost) | Maximum<br>Margin As<br>A % of<br>List Price |
|--------------------|---------------------------|----------------------------------|---|---|--|
| 10                 | 230.357¢                  | 23.04¢                           | 35.17¢                                      | —   | —  |
| 20                 | 253.343                   | 12.62                            | 24.75                                       | —   | —  |
| 30                 | 277.750                   | 9.26                             | 21.39                                       | —   | —  |
| 40                 | 308.141                   | 7.70                             | 19.83                                       | 0.67¢   | 3.27%  |
| 50                 | 333.533                   | 6.67                             | 18.80                                       | 1.70  | 8.29   |
| 60                 | 363.927                   | 6.07                             | 18.20                                       | 2.43  | 11.85  |
| 70                 | 389.334                   | 5.56                             | 17.69                                       | 2.81  | 13.71  |
| 80                 | 419.364                   | 5.24                             | 17.37                                       | 3.13  | 15.27  |
| 90                 | 445.117                   | 4.95                             | 17.08                                       | 3.42  | 16.68  |
| 100                | 475.166                   | 4.75                             | 16.88                                       | 3.62  | 17.66  |
| 120                | 530.949                   | 4.42                             | 16.55                                       | 3.95  | 19.27  |
| 140                | 586.750                   | 4.19                             | 16.32                                       | 4.18  | 20.39  |
| 160                | 642.533                   | 4.02                             | 16.15                                       | 4.35  | 21.22  |
| 180                | 698.316                   | 3.88                             | 16.01                                       | 4.49  | 21.90  |
| 200                | 753.771                   | 3.77                             | 15.90                                       | 4.60  | 22.44  |
| 225                | 824.933                   | 3.67                             | 15.80                                       | 4.70  | 22.93  |
| 250                | 890.744                   | 3.56                             | 15.69                                       | 4.81  | 23.46  |
| 300                | 1032.741                  | 3.44                             | 15.57                                       | 4.93  | 24.05  |
| 350                | 1169.350                  | 3.34                             | 15.47                                       | 5.03  | 24.54  |
| 400                | 1311.346                  | 3.28                             | 15.41                                       | 5.09  | 24.83  |
| 500                | 1589.934                  | 3.18                             | 15.31                                       | 5.19  | 25.32  |
| 600                | 1863.553                  | 3.11                             | 15.24                                       | 5.26  | 25.66  |
| 700                | 2142.504                  | 3.06                             | 15.19                                       | 5.31  | 25.90  |
| 800                | 2421.091                  | 3.03                             | 15.16                                       | 5.34  | 26.05  |
| 900                | 2699.697                  | 3.00                             | 15.13                                       | 5.37  | 26.20  |
| 1000               | 2978.303                  | 2.98                             | 15.11                                       | 5.39  | 26.29  |
| 1100               | 3256.927                  | 2.96                             | 15.09                                       | 5.41  | 26.39  |
| 1200               | 3541.483                  | 2.95                             | 15.08                                       | 5.42  | 26.44  |

\*Cost per route minute = \$.182

Platform cost (fiber quart—homogenized) = \$.1213

List price (fiber quart—homogenized) = \$.205

[fol. 1024]

## SCHEDULE 5

Determining a Discount Schedule for Chain Stores  
March, 1955\*

| Volume<br>(Quarts) | Total<br>Delivery<br>Cost | Delivery<br>Cost Per<br>Quart | Delivery &<br>Platform<br>Cost Per<br>Quart | Maximum<br>Available<br>Margin<br>(List Price<br>Less Cost) | Maximum<br>Margin As<br>A % of<br>List Price |
|--------------------|---------------------------|-------------------------------|---|---|--|
| 10                 | 200.327¢                  | 20.03¢                        | 32.16¢                                      | —   | —  |
| 20                 | 216.307                   | 10.82                         | 22.95                                       | —   | —  |
| 30                 | 235.708                   | 7.86                          | 19.99                                       | 0.51¢   | 2.49%  |
| 40                 | 260.096                   | 6.50                          | 18.63                                       | 1.87  | 9.12   |
| 50                 | 279.479                   | 5.59                          | 17.72                                       | 2.78  | 13.56  |
| 60                 | 303.867                   | 5.06                          | 17.19                                       | 3.31  | 16.15  |
| 70                 | 323.268                   | 4.62                          | 16.75                                       | 3.75  | 18.29  |
| 80                 | 347.292                   | 4.34                          | 16.47                                       | 4.03  | 19.66  |
| 90                 | 367.039                   | 4.08                          | 16.21                                       | 4.29  | 20.93  |
| 100                | 390.718                   | 3.91                          | 16.04                                       | 4.46  | 21.76  |
| 120                | 434.853                   | 3.62                          | 15.75                                       | 4.75  | 23.17  |
| 140                | 478.642                   | 3.42                          | 15.55                                       | 4.95  | 24.15  |
| 160                | 522.413                   | 3.27                          | 15.40                                       | 5.10  | 24.88  |
| 180                | 566.184                   | 3.15                          | 15.28                                       | 5.22  | 25.46  |
| 200                | 609.627                   | 3.05                          | 15.18                                       | 5.32  | 25.95  |
| 225                | 665.774                   | 2.96                          | 15.09                                       | 5.41  | 26.39  |
| 250                | 716.570                   | 2.87                          | 15.00                                       | 5.50  | 26.84  |
| 300                | 828.537                   | 2.76                          | 14.89                                       | 5.61  | 27.37  |
| 350                | 935.116                   | 2.67                          | 14.80                                       | 5.70  | 27.80  |
| 400                | 1047.082                  | 2.62                          | 14.75                                       | 5.75  | 28.04  |
| 500                | 1265.610                  | 2.53                          | 14.66                                       | 5.84  | 28.48  |
| 600                | 1479.169                  | 2.47                          | 14.60                                       | 5.90  | 28.78  |
| 700                | 1698.060                  | 2.43                          | 14.56                                       | 5.94  | 28.98  |
| 800                | 1916.587                  | 2.40                          | 14.53                                       | 5.97  | 29.12  |
| 900                | 2135.133                  | 2.37                          | 14.50                                       | 6.00  | 29.27  |
| 1000               | 2353.679                  | 2.35                          | 14.48                                       | 6.02  | 29.37  |
| 1100               | 2572.242                  | 2.34                          | 14.47                                       | 6.03  | 29.41  |
| 1200               | 2796.739                  | 2.33                          | 14.46                                       | 6.04  | 29.46  |

\*Cost per route minute = \$.182

Platform cost (fiber quart—homogenized)—\$.1213

List price (fiber quart—homogenized)—\$.205

[fol. 1025]

## SCHEDULE 6

Establishing the Minimum Profit-Maximum Discount Line for Chain Stores, March, 1955  
(Refer Also To Schedules 4 and 5)

| Volume<br>(Quarts) | Independent Store              |  |  | Chain Store                    |  |
|--------------------|--------------------------------|--|--|--------------------------------|--|
|                    | Maximum<br>Available<br>Margin | Rebated<br>Discount,<br>March,<br>1955 | Gross<br>Margin<br>(Col. 1-<br>Col. 2) | Maximum<br>Available<br>Margin | Maximum<br>Discount<br>(Col. 4-<br>Col. 3) |
| 10                 | —                              | 3.40%                                  | —                                      | —                              | —  |
| 20                 | —                              | 3.80                                   | —                                      | —                              | —  |
| 30                 | —                              | 4.20                                   | —                                      | 2.49%                          | 2.49%                                      |
| 40                 | 3.27%                          | 4.60                                   | —                                      | 9.12                           | 9.12                                       |
| 50                 | 8.29                           | 5.00                                   | 3.29%                                  | 13.56                          | 10.27                                      |
| 60                 | 11.85                          | 5.20                                   | 6.65                                   | 16.15                          | 9.50                                       |
| 70                 | 13.71                          | 5.40                                   | 8.31                                   | 18.29                          | 9.98                                       |
| 80                 | 15.27                          | 5.60                                   | 9.67                                   | 19.66                          | 9.99                                       |
| 90                 | 16.68                          | 5.80                                   | 10.88                                  | 20.93                          | 10.05                                      |
| 100                | 17.66                          | 6.00                                   | 11.66                                  | 21.76                          | 10.10                                      |
| 120                | 19.27                          | 6.40                                   | 12.87                                  | 23.17                          | 10.30                                      |
| 140                | 20.39                          | 6.80                                   | 13.59                                  | 24.15                          | 10.56                                      |
| 160                | 21.22                          | 7.20                                   | 14.02                                  | 24.88                          | 10.86                                      |
| 180                | 21.90                          | 7.60                                   | 14.30                                  | 25.46                          | 11.16                                      |
| 200                | 22.44                          | 8.00                                   | 14.44                                  | 25.95                          | 11.51                                      |
| 225                | 22.93                          | 8.00                                   | 14.93                                  | 26.39                          | 11.46                                      |
| 250                | 23.46                          | 8.00                                   | 15.46                                  | 26.83                          | 11.37                                      |
| 300                | 24.05                          | 8.00                                   | 16.05                                  | 27.37                          | 11.32                                      |
| 350                | 24.54                          | 8.00                                   | 16.54                                  | 27.80                          | 11.26                                      |
| 400                | 24.83                          | 8.00                                   | 16.83                                  | 28.04                          | 11.21                                      |
| 500                | 25.32                          | 8.00                                   | 17.32                                  | 28.48                          | 11.16                                      |
| 600                | 25.66                          | 8.00                                   | 17.66                                  | 28.78                          | 11.12                                      |
| 700                | 25.90                          | 8.00                                   | 17.90                                  | 28.98                          | 11.08                                      |
| 800                | 26.05                          | 8.00                                   | 18.05                                  | 29.12                          | 11.07                                      |
| 900                | 26.20                          | 8.00                                   | 18.20                                  | 29.27                          | 11.07                                      |
| 1000               | 26.29                          | 8.00                                   | 18.29                                  | 29.37                          | 11.08                                      |
| 1100               | 26.39                          | 8.00                                   | 18.39                                  | 29.41                          | 11.02                                      |
| 1200               | 26.44                          | 8.00                                   | 18.44                                  | 29.46                          | 11.02                                      |

[REFERENCES] ON PAGE 348]

[fol. 1026]

## References

1. Reference: Mr. R. Buthman—Sales Department
2. Source: Carbon copies of verified and signed delivery tickets (Form #128) for Route #1471, March 14-19, 1955
3. Source: Carbon copies of verified and signed delivery tickets (Form #128) for Route #1471, March 14-19, 1955
4. Source: Summary of Sales, Delivery, and Collection Expenses (Form #50), March 1955
5. Source: Product Cost To Divisions, March 1955 (Forms #10, 11, 11A, 11B, 11C, 11D, 11E, 11F, 13, 14, 15B, 16B, 17A, 18)
6. Source: (a) Wholesale List Prices (Form #M 95-2), Revision #192, December 12, 1954  
(b) Chain Store Price List (Form #M 54), Revision #222, March 16, 1955
7. Source: Resale Store Discount (Form #217-5M), March 1955  
discount rate:
8. Source: Average route driving time for 28 routes in Elston Division
9. Source: (a) Summary of Sales, Delivery, and Collection Expenses (Form #50), March 1955  
(b) Delivery cost calculations for Elston Division routes
10. Source: Product Cost To Divisions, March 1955\*
11. Source: Summary bills to A & P and Kroger chains, week ending March 19, 1955

[fol. 1027] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

BOWMAN EXHIBIT No. 15

Test of Bracket Discount Plan

Effective September 26, 1955

Bowman Dairy Company

Chicago, Illinois

November 1955

[fol. 1028] Stevenson, Jordan & Harrison, Inc.  
Management Engineers and Consultants

19 West 44th Street  
New York 36, N.Y.

205 W. Wacker Drive  
Chicago 6, Ill.

779 Washington Street  
Buffalo 3, N.Y.

Hanna Building  
Cleveland 15, O.

New York 36, N.Y.  
November 20, 1955.

Mr. Francis Kullman, Jr.,  
Bowman Dairy Company,  
140 West Ontario Street,  
Chicago, Illinois.

DEAR MR. KULLMAN:

We have tested the bracket discount plan effective on September 26, 1955 to determine if cost differences justify the differences in discounts between chain stores and the several independent store volume groups.

We tested the groups of customers established by the plan by basing the cost and price calculations on sample size purchase orders within each bracket. A recent analysis of the three store divisions enabled us to select a good sample. For the relatively short period that you expect to use the bracket system, we believe that there will be no significant change in this distribution of purchase order size.

[fol. 1029] The basis for test was the marginal return



principle described in the *Manual For Establishing And Testing A Store Discount Schedule*. Using September costs and the delivery time standards in Appendix A of the manual, we calculated and compared for each store volume group, the gross margin available to Bowman Dairy after product cost, delivery cost, and rebated discount. The discount earned by the chain store group was 9.8 per cent, and for the independents was 0, 2.0, 3.0, 4.0, and 5.0 per cent, depending upon purchase volume. The calculations show that in a comparison between any two groups, the gross margin from the lower-priced customer (higher volume, higher discount) is greater than the corresponding margin from the higher-priced customer (lower volume, lower discount). Therefore, the advantage in discount does not exceed the accompanying cost saving.

The data and calculations for these conclusions are summarized in attached Schedules:

Schedule 1—Bracket system discount plan effective September 26, 1955, and size of representative purchase within each group.

Schedule 2—Illustration of the complete calculation for determining marginal return.

Schedule 3—Results of the marginal return calculations for all volume categories.

[fol. 1030] It is our understanding that, despite the favorable results shown by this sampling test of a bracket system, that you will return to the more equitable sliding-scale type of rebated discount plan as soon as market conditions permit.

Respectfully submitted, Stevenson, Jordan & Harrison, Inc., A. J. Bergfeld.

AJB:dg

[fol. 1031]

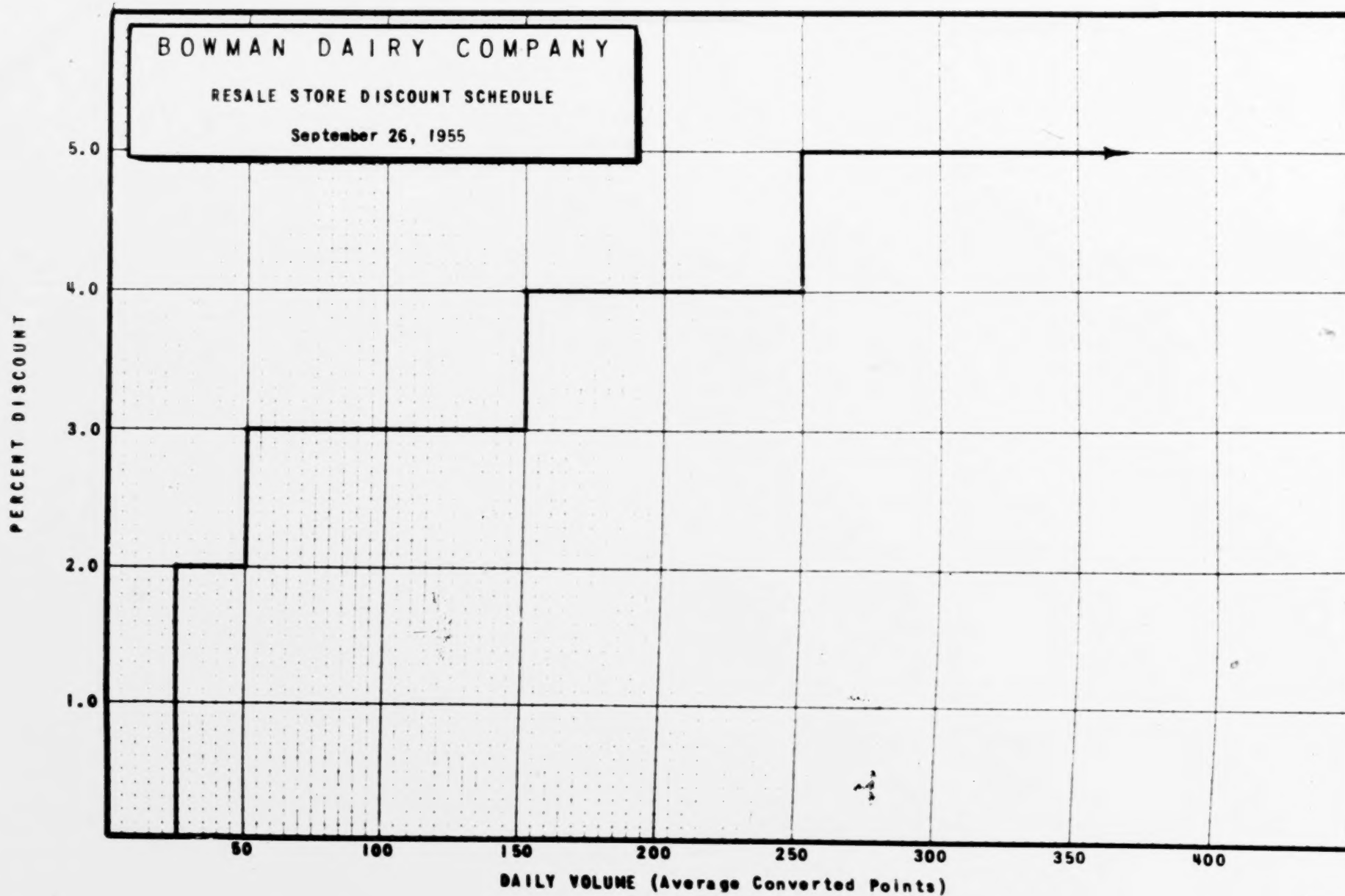
## Schedule 1A

## Discounts Effective September 26, 1955 and Size of Representative Purchase Within Each Group

| Bracket             |      | Size of Representative Purchase (1) |
|---------------------|------|-------------------------------------|
| Independent Stores: |      |                                     |
| 0—24 Points         | 0%   | 14 Points                           |
| 25—49 Points        | 2 0% | 36 Points                           |
| 50—149 Points       | 3 0% | 83 Points                           |
| 150—249 Points      | 4 0% | 186 Points                          |
| 250—Points or more  | 5 0% | 521 Points                          |
| Chain Stores        | 9 8% | 461 Points                          |

1. This is based upon an analysis made by Mr. D. Parmalee (Accounting Department) of independent stores served by the three store divisions in June, 1955. The representative for each group is the average size purchase.

The average was felt to be a better representative than the modal point of a frequency distribution for each bracket in this situation. Except for the 6—24 point group, a frequency distribution did not show strong central tendency and was skewed to the high volume side of the range, i.e., the customers were concentrated at the low volume end of the range. Consequently, the average was considered a better representative and a conservative one. The 461 point chain store outlet represents average sales to all outlets for a ten week period ending 9/3/55.



[Vol. 1032]

Schedule 1B

[fol. 1033]

## SCHEDULE 2

## Calculation of the Marginal Return From a Customer Transaction Earning a 4% Discount (1)

186 points, including 27 glass containers,  
equal 11.13 cases.

|   |     |                   |
|---|-----|-------------------|
| 1. Elements which are constant per delivery |     |                   |
| Get order.....                              | 1   | 37                |
| Delay to get order.....                     |     | 11                |
| Make out delivery slip.....                 | 2   | 14                |
| Have slip checked.....                      |     | 19                |
| Route bookkeeping.....                      |     | 63                |
| Drive on route (representative).....        | 3   | 69                |
| Collect.....                                | 1   | 19                |
| Delay to collect.....                       | 13  | 9 450 min.        |
| 2. Elements which vary with volume          |     |                   |
| Unload order.....                           | 092 | per case          |
| Load empties on truck.....                  | 109 | per case          |
| Arrange load.....                           | 377 | per case          |
| Load cases at plant.....                    | 143 | per case          |
| Unload cases at plant.....                  | 200 | per case          |
| Customer service.....                       | 033 | per unit          |
| Sort bottles.....                           | 025 | per bottle 17 064 |
| 3. Elements which have both characteristics |     |                   |
| Select merchandise                          |     |                   |
| 1 13 for 1st case + 48/add'l. case.         |     |                   |
| Deliver order                               |     |                   |
| .795 for 1st case + .295/add'l. case.       |     |                   |
| Pick up empties                             |     |                   |
| .43 for 1st case + .23/add'l. case          |     | 12.536            |

[fol. 1034]

|  |             |
|--|-------------|
| 4. Total delivery time.....  | 39 050 min. |
| 5. Total delivery cost @ \$ 182.....   | \$ 7 11     |
| 6. Total delivery and platform cost (\$ 1349).....                                       | \$32 20     |
| 7. Total list price @ \$ 185.....  | \$34 41     |
| 8. Available margin.....   | \$ 2 21     |
| 9. Discount (4%).....  | \$ 1 38     |
| 10. Gross margin after discount.....   | \$ 0 83     |
| 11. Net price (line 7 - line 9).....   | \$33 03     |
| 12. Gross margin after discount as a percentage of net price<br>(line 10 + line 11)..... | 2 5%        |

- (1) Representative order size for this group—186 points  
List price (fiber quart of milk)—18<sup>1</sup>/<sub>2</sub>¢  
Platform cost (Sept. 1955)—13.49¢  
Cost per route minute (Sept. 1955)—18.2¢

[fol. 1036] IN UNITED STATES DISTRICT COURT

BOWMAN EXHIBIT No. 16

Test of Store Discount Plan  
Effective January 2, 1956  
Bowman Dairy Company  
Chicago, Illinois  
April 1956

[fol. 1037] Stevenson, Jordan & Harrison, Inc.  
Management Engineers and Consultants

19 West 44th Street  
New York 36, N.Y.

779 Washington Street  
Buffalo 3, N.Y.

205 W. Wacker Drive  
Chicago 6, Ill.

Hanna Building  
Cleveland 15, O.

New York 36, N.Y.  
April 16, 1956.

Mr. Francis Kullman, Jr., President,  
Bowman Dairy Company,  
140 West Ontario Street,  
Chicago, Illinois.

DEAR MR. KULLMAN:

In response to your request, we have made a study to ascertain whether the difference between a discount of 10% to A & P and Kroger Stores in the Chicago area and the discounts allowed to independents as established by the Schedule effective January 2, 1956, is justified by cost differences. We have based our test on actual sales data for the week ending January 14, 1956.

In making this study we have followed the procedure described in the *Manual For Establishing And Testing A Store Discount Schedule*, which we will refer to as "Basic Manual", and in the discount schedule tests (March 1955), which we will refer to as "March Tests." The sample's results indicate that the A & P Stores and the Kroger Stores in the Chicago area could each have been granted an overall discount of 10.01%.

[fol. 1038] The data on which this conclusion is based is summarized in a series of Schedules, which are listed below with a reference to the portions of the Basic Manual and March Tests which explain each Schedule:

- Schedule 1—Published schedule and graphic presentation of Bowman store discount schedule for independent stores, effective January 2, 1956. See Basic Manual on pp. 11-12 and Schedule 5.
- Schedule 2—A calculation of maximum discount or minimum profit that could be justified for an individual chain store purchasing a 400 point volume. See Basic Manual pp. 13-14; see also March Tests, p. 9.
- Schedule 3—Table reflecting results of similar calculations throughout the volume range. See Basic Manual, p. 14, and p. 2 of Schedule 2A; see also schedule 6 of March Tests.
- Schedule 4—Graphic presentation of "minimum profit—maximum discount". See Basic Manual, Schedule 4A.
- Schedule 5—Example of calculation of allowable discount for a particular chain outlet.
- Schedule 6—Summary of allowable discounts for all A & P Stores in the Chicago area and for all Kroger Stores in the Chicago area. See March Tests, pp. 10-11.

Respectfully submitted, Stevenson, Jordan & Harrison, Inc., A. J. Bergfeld.

AJB:ak

[fol. 1039]

## Schedule 1A

## Resale Store Discount Schedule

Effective Monday, January 2, 1956

## Graduated Resale Store Discount Schedule

A discount on all purchases of fresh milk products as hereinafter listed, will be paid as follows:

| Average Converted<br>Points per Day | Percent of<br>Discount |
|-------------------------------------|------------------------|
| 0 to 24                             | 0¢                     |
| 25 to 90                            | 2¢ to 3¢               |
| 90 to 190                           | 3¢ to 4¢               |
| 190 to 300                          | 4¢ to 5¢               |
| 300 to 355                          | 5¢ to 5½¢              |
| 355 and over                        | 5½¢                    |

Discounts may be changed from time to time by notice as market conditions vary.

These discounts will be paid upon the following conditions:

1. Purchase of an average of 25 or more converted points of Bowman milk products per normal delivery day.
2. The store customer must expedite the driver-salesman in obtaining the order and collecting for it.

Discounts will be computed as follows:

1. Your monthly purchases of Bowman milk products will be converted to points. This total will be divided by the number of days during the month upon which Bowman Dairy Company makes store deliveries. The result becomes your average converted points per day.
2. From your average converted points per day your discount is determined from the discount schedule above.
3. Your discount rate for the month will then be applied to the dollar value of your total purchases of Bowman Dairy Company's milk products, which shall include the following:

Milk, including quarts, half-gallons and gallons

Golden Guernsey

Cream, including Half & Half, Rich Cream and Whipping Cream

Quick-Whip

Sour Cream  
Buttermilk  
Dari-Rich  
Energee  
Sta-Slim  
Yogurt  
Egg Nog  
Strawberry Drink  
Certified Products  
Cottage Cheese

Discount checks will be mailed to you during the month following the month upon which your discount rate is computed.

No. 9

Bowman Dairy Company.

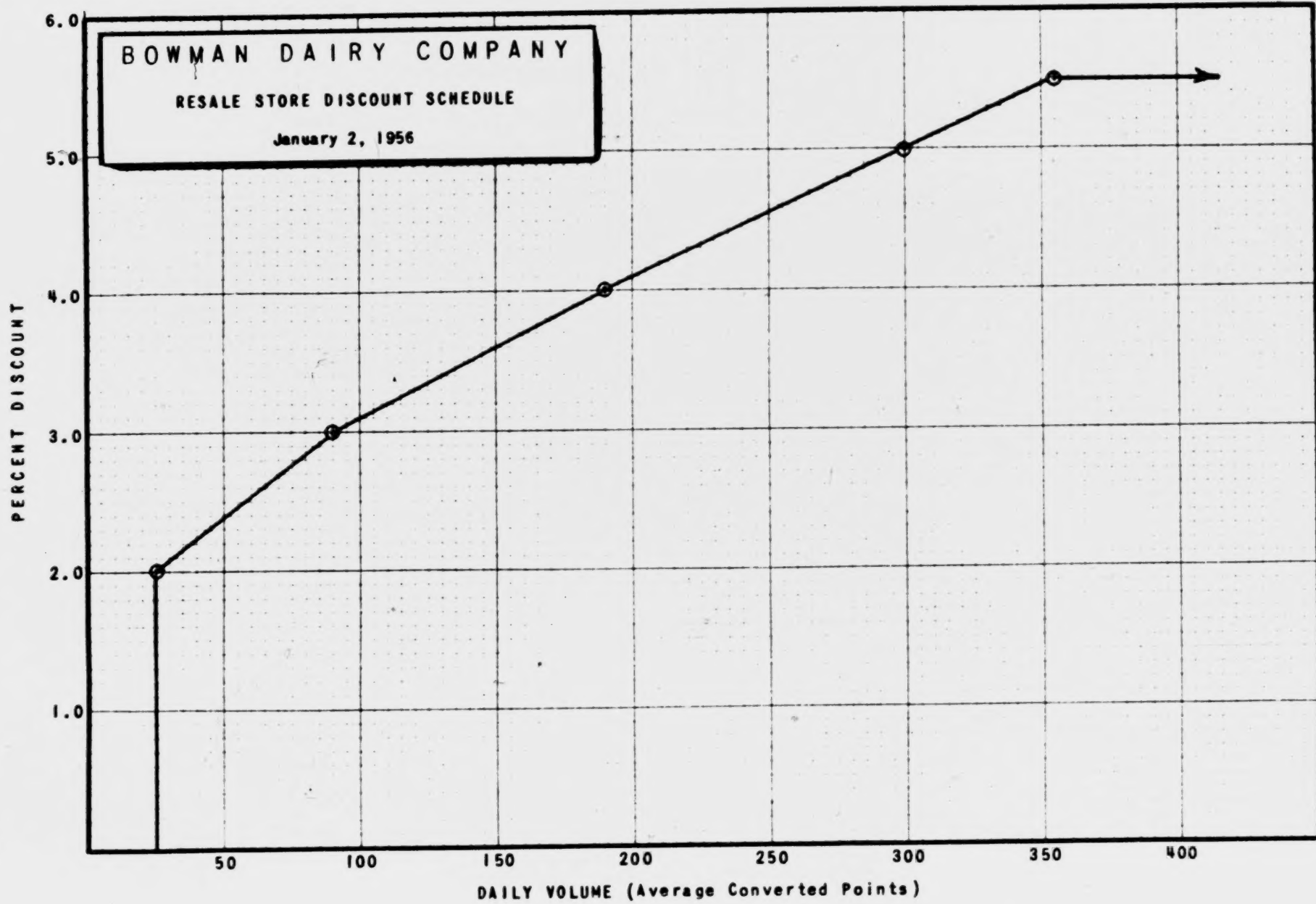


[fol. 1035]

Schedule 3  
Marginal Returns for all Volume Categories

|   | Chain      |           | Independent Stores |           |            |            |
|---|------------|-----------|--------------------|-----------|------------|------------|
|   | 9 8%       | 0%        | 2%                 | 3%        | 4%         | 5%         |
|   | 461 Points | 14 Points | 36 Points          | 83 Points | 186 Points | 321 Points |
| 1. Total delivery and platform cost .....                         | \$72 63    | \$ 4 27   | \$ 7 81            | \$15 46   | \$32 20    | \$54 11    |
| 2. Total list price .....   | 85 29      | 2 59      | 6 66               | 15 36     | 34 41      | 59 39      |
| 3. Available margin (line 2 - line 1) .....                       | 12 66      | (1 68)    | (1 15)             | (0 10)    | 2 21       | 5 28       |
| 4. Discount .....   | 8 36       | —         | 0 13               | 0 46      | 1 38       | 2 97       |
| 5. Margin, after discount (line 3 - line 4) .....                 | 4 30       | (1 68)    | (1 28)             | (0 56)    | 0 83       | 2 31       |
| 6. Net price (line 2 - line 4) .....                              | 76 93      | 2 59      | 6 53               | 14 90     | 33 03      | 56 42      |
| 7. Margin after discount as a % of net price (line 5 + line 6) .. | 5 6%       | (64 9)%   | (19 6)%            | (3 8)%    | 2 5%       | 4 1%       |

( ) Denotes Loss.



[fol. 1041]

## Schedule 2

## Allowable Discount to a Chain Store Outlet Purchasing 400 Point per Day

|   | Independent<br>Store | Chain<br>Store |
|---|----------------------|----------------|
| 1. List price   | 20.00¢               | 20.00¢ (1)     |
| 2. Unit platform and delivery cost at a 400 point<br>volume (2)             | 17.05¢               | 16.42¢         |
| 3. Margin between price and cost  | 2.95¢                | 3.58¢          |
| 4. Margin, as a % of price  | 14.75%               | 19.40%         |
| 5. Rebated discount to independent store (see<br>Schedule 1)                | 5.50%                |                |
| 6. Gross margin remaining   | 9.25% (3)            |                |
| 7. Minimum gross margin allowable on chain<br>store transaction             |                      | 9.25%          |
| 8. Maximum allowable discount to a chain<br>store at a 400 point volume (4) |                      | 10.15%         |

(1) During this period the list price of a fiber quart of milk to chain stores was 20.0¢, and the net price was 18¢.

(2) Detailed calculations shown in Schedule 3.

(3) Calculation of allowable discount is based on equal remaining gross margins from both types of transactions.

(4) The minimum margin determines the maximum discount.

[fol. 1042]

## Schedule 3A

Determining a Discount Schedule for Independent Stores, January, 1956\*

| Daily<br>Volume<br>(Quarts) | Total<br>Delivery<br>Cost | Unit<br>Delivery<br>Cost | Margin<br>Available<br>(List Price<br>Less Delivery<br>and Platform<br>Cost) | Maximum<br>Margin as<br>a % of<br>List Price |
|-----------------------------|---------------------------|--------------------------|--|--|
| 25                          | 271 784c                  | 10 87c                   | —  | —  |
| 30                          | 282 680                   | 9 42                     | —  | —  |
| 40                          | 313 224                   | 7 83                     | —  | —  |
| 50                          | 339 031                   | 6 78                     | —  | —  |
| 60                          | 369 926                   | 6 17                     | 0 08c  | 0 40%  |
| 70                          | 395 752                   | 5 65                     | 0 60   | 3 00   |
| 80                          | 421 560                   | 5 27                     | 0 98   | 4 90   |
| 90                          | 452 455                   | 5 03                     | 1 22   | 6 10   |
| 100                         | 478 262                   | 4 78                     | 1 47   | 7 35   |
| 120                         | 534 632                   | 4 46                     | 1 79   | 8 95   |
| 140                         | 591 334                   | 4 22                     | 2 03   | 10 15  |
| 160                         | 648 037                   | 4 05                     | 2 20   | 11 00  |
| 180                         | 704 758                   | 3 92                     | 2 33   | 11 65  |
| 190                         | 730 547                   | 3 84                     | 2 41   | 12 05  |
| 200                         | 761 460                   | 3 81                     | 2 44   | 12 20  |
| 225                         | 828 708                   | 3 68                     | 2 57   | 12 85  |
| 250                         | 900 691                   | 3 60                     | 2 65   | 13 25  |
| 300                         | 1039 922                  | 3 46                     | 2 79   | 13 95  |
| 315                         | 1081 011                  | 3 43                     | 2 82   | 14 10  |
| 330                         | 1122 081                  | 3 40                     | 2 85   | 14 25  |
| 340                         | 1152 976                  | 3 39                     | 2 86   | 14 30  |
| 350                         | 1178 783                  | 3 37                     | 2 88   | 14 40  |
| 355                         | 1194 434                  | 3 36                     | 2 89   | 14 45  |
| 375                         | 1251 137                  | 3 34                     | 2 91   | 14 55  |
| 400                         | 1318 033                  | 3 30                     | 2 95   | 14 75  |
| 450                         | 1463 313                  | 3 25                     | 3 00   | 15 00  |
| 500                         | 1601 212                  | 3 20                     | 3 05   | 15 25  |
| 550                         | 1740 462                  | 3 16                     | 3 09   | 15 45  |
| 600                         | 1879 693                  | 3 13                     | 3 12   | 15 60  |
| 700                         | 2158 155                  | 3 08                     | 3 17   | 15 85  |
| 800                         | 2436 247                  | 3 05                     | 3 20   | 16 00  |
| 900                         | 2719 796                  | 3 02                     | 3 23   | 16 15  |
| 1000                        | 2997 907                  | 3 00                     | 3 25   | 16 25  |
| 1100                        | 3276 369                  | 2 98                     | 3 27   | 16 35  |
| 1200                        | 3559 585                  | 2 97                     | 3 28   | 16 40  |

\* Cost per route minute—\$.185.

Platform cost (fiber quart-homogenized)—\$.1375.

List Price (fiber quart-homogenized)—\$.20.

[fol. 1043]

## Schedule 3B

Determining a Discount Schedule for Chain Stores, January, 1956\*

| Daily<br>Volume<br>(Quarts) | Total<br>Delivery<br>Cost | Unit<br>Delivery<br>Cost | Margin<br>Available<br>(List Price<br>Less Delivery<br>and Platform<br>Cost) | Maximum<br>Margin as<br>a % of<br>List Price |
|-----------------------------|---------------------------|--------------------------|--|--|
| 25                          | 222 259¢                  | 8 89¢                    | —  | —  |
| 30                          | 234 839                   | 7 83                     | —  | —  |
| 40                          | 254 560                   | 6 63                     | —  | —  |
| 50                          | 269 157                   | 5 38                     | 0 87¢  | 4 35%  |
| 60                          | 288 878                   | 4 81                     | 1 44   | 7 20   |
| 70                          | 308 913                   | 4 41                     | 1 84   | 9 20   |
| 80                          | 328 616                   | 4 11                     | 2 14   | 10 70  |
| 90                          | 348 337                   | 3 87                     | 2 38   | 11 90  |
| 100                         | 368 021                   | 3 68                     | 2 57   | 12 85  |
| 120                         | 407 796                   | 3 40                     | 2 85   | 14 25  |
| 140                         | 442 113                   | 3 16                     | 3 09   | 15 45  |
| 160                         | 481 870                   | 3 01                     | 3 24   | 16 20  |
| 180                         | 521 293                   | 2 90                     | 3 35   | 16 75  |
| 190                         | 540 977                   | 2 85                     | 3 40   | 17 00  |
| 200                         | 560 680                   | 2 80                     | 3 45   | 17 25  |
| 225                         | 607 929                   | 2 70                     | 3 55   | 17 75  |
| 250                         | 654 826                   | 2 62                     | 3 63   | 18 15  |
| 300                         | 753 690                   | 2 51                     | 3 74   | 18 70  |
| 315                         | 780 867                   | 2 48                     | 3 77   | 18 85  |
| 330                         | 808 062                   | 2 45                     | 3 80   | 19 00  |
| 340                         | 827 764                   | 2 43                     | 3 82   | 19 10  |
| 350                         | 847 467                   | 2 42                     | 3 83   | 19 15  |
| 355                         | 859 695                   | 2 42                     | 3 83   | 19 15  |
| 375                         | 894 364                   | 2 38                     | 3 87   | 19 35  |
| 400                         | 946 349                   | 2 37                     | 3 88   | 19 40  |
| 450                         | 1039 774                  | 2 31                     | 3 94   | 19 70  |
| 500                         | 1138 990                  | 2 28                     | 3 97   | 19 85  |
| 550                         | 1232 766                  | 2 24                     | 4 01   | 20 05  |
| 600                         | 1326 709                  | 2 21                     | 4 04   | 20 20  |
| 700                         | 1519 553                  | 2 17                     | 4 08   | 20 40  |
| 800                         | 1712 194                  | 2 14                     | 4 11   | 20 55  |
| 900                         | 1904 871                  | 2 12                     | 4 15   | 20 65  |
| 1000                        | 2097 512                  | 2 10                     | 4 15   | 20 75  |
| 1100                        | 2299 152                  | 2 08                     | 4 17   | 20 85  |
| 1200                        | 2483 163                  | 2 07                     | 4 18   | 20 90  |

\* Cost per route minute—\$.185.

Platform cost (fiber quart-homogenized)—\$ 1375

List Price (fiber quart-homogenized)—\$.20.

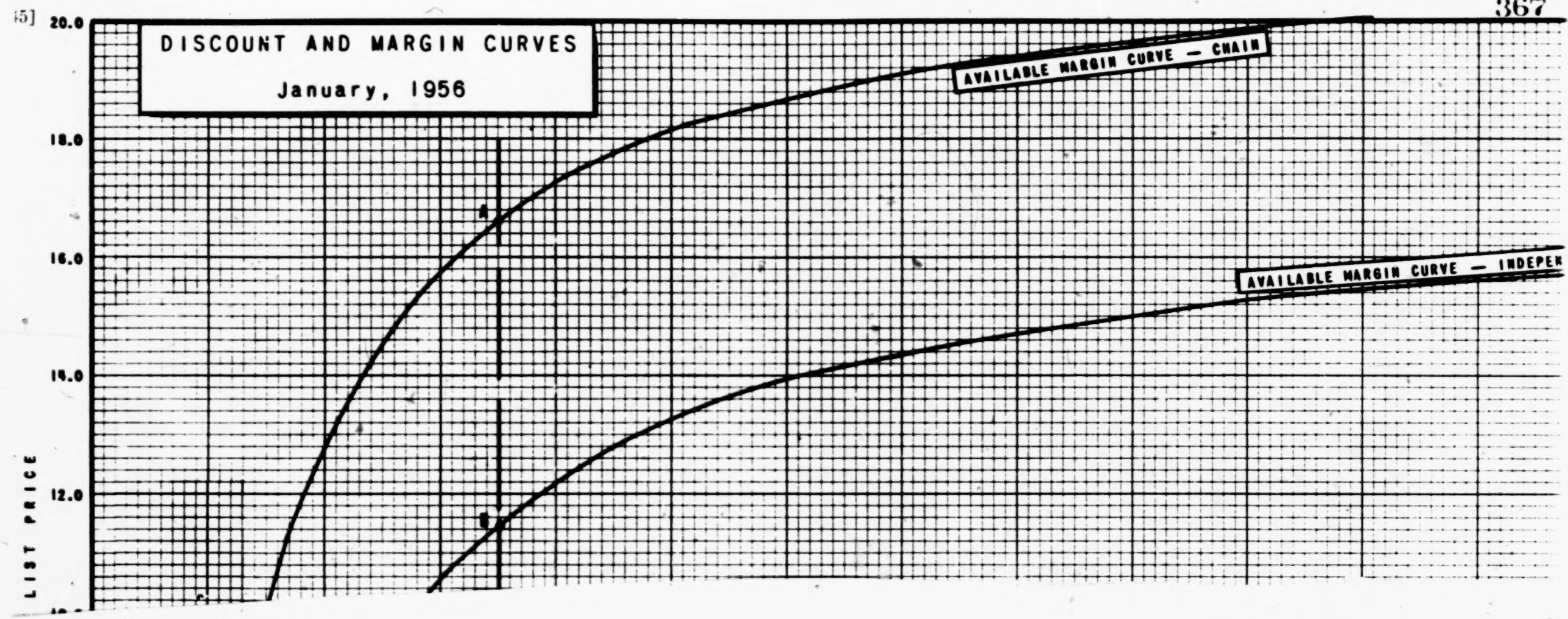
[fol. 1044]

## Schedule 3C

Establishing the Minimum Profit-Maximum Discount Line for Chain Stores,  
January, 1956

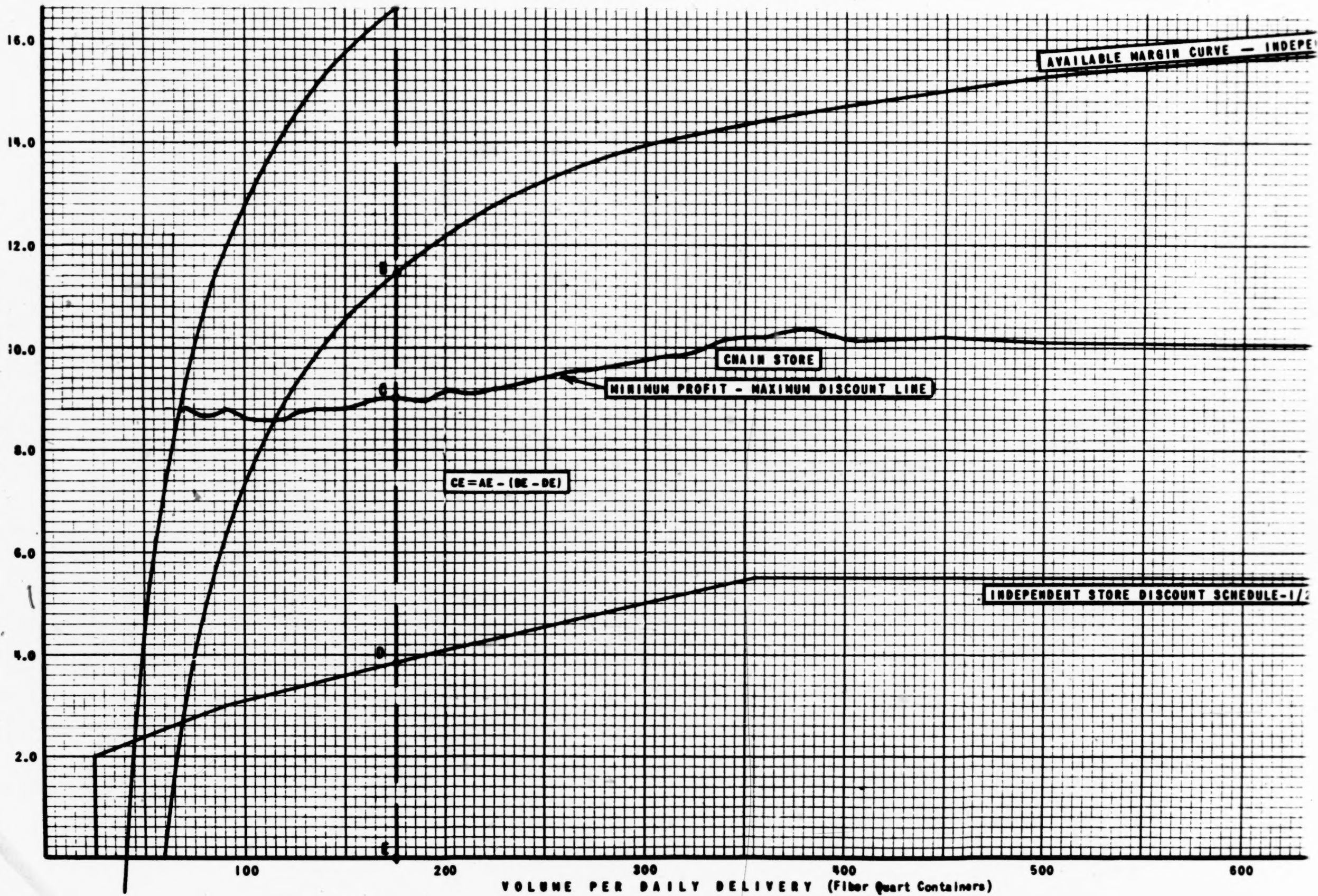
(Refer Also to Schedules 1 and 2)

| Daily<br>Volume<br>(Quarts) | Independent Store              |                     |                 | Chain Store                    |                     |
|-----------------------------|--------------------------------|---------------------|-----------------|--------------------------------|---------------------|
|                             | Maximum<br>Available<br>Margin | Rebated<br>Discount | Gross<br>Margin | Maximum<br>Available<br>Margin | Maximum<br>Discount |
|                             | 1                              | 2                   | 3-1-2           | 4                              | 5-4-3               |
| 25                          | —                              | 2.00%               | —               | —                              | —                   |
| 30                          | —                              | 2.08                | —               | —                              | —                   |
| 40                          | —                              | 2.23                | —               | —                              | —                   |
| 50                          | —                              | 2.38                | —               | 4.35%                          | 4.35%               |
| 60                          | 0.40                           | 2.54                | —               | 7.20                           | 7.20%               |
| 70                          | 3.00                           | 2.69                | 0.31%           | 9.20                           | 8.89%               |
| 80                          | 4.90                           | 2.85                | 2.05            | 10.70                          | 8.65                |
| 90                          | 6.10                           | 3.00                | 3.10            | 11.90                          | 8.80                |
| 100                         | 7.35                           | 3.10                | 4.25            | 12.85                          | 8.60                |
| 120                         | 8.95                           | 3.30                | 5.65            | 14.25                          | 8.60                |
| 140                         | 10.15                          | 3.50                | 6.65            | 15.45                          | 8.80                |
| 160                         | 11.00                          | 3.70                | 7.30            | 16.20                          | 8.90                |
| 180                         | 11.65                          | 3.90                | 7.75            | 16.75                          | 9.00                |
| 190                         | 12.05                          | 4.00                | 8.05            | 17.00                          | 8.95                |
| 200                         | 12.20                          | 4.09                | 8.11            | 17.25                          | 9.14                |
| 225                         | 12.85                          | 4.32                | 8.53            | 17.75                          | 9.22                |
| 250                         | 13.25                          | 4.55                | 8.70            | 18.15                          | 9.45                |
| 300                         | 13.95                          | 5.00                | 8.95            | 18.70                          | 9.75                |
| 315                         | 14.10                          | 5.14                | 8.96            | 18.85                          | 9.89                |
| 330                         | 14.25                          | 5.27                | 8.98            | 19.00                          | 10.02               |
| 340                         | 14.30                          | 5.36                | 8.94            | 19.10                          | 10.16               |
| 350                         | 14.40                          | 5.45                | 8.95            | 19.15                          | 10.20               |
| 355                         | 14.45                          | 5.50                | 8.95            | 19.15                          | 10.20               |
| 375                         | 14.55                          | 5.50                | 9.05            | 19.35                          | 10.30               |
| 400                         | 14.75                          | 5.50                | 9.25            | 19.40                          | 10.15               |
| 450                         | 15.00                          | 5.50                | 9.50            | 19.70                          | 10.20               |
| 500                         | 15.25                          | 5.50                | 9.75            | 19.85                          | 10.10               |
| 550                         | 15.45                          | 5.50                | 9.95            | 20.05                          | 10.10               |
| 600                         | 15.60                          | 5.50                | 10.10           | 20.20                          | 10.10               |
| 700                         | 15.85                          | 5.50                | 10.35           | 20.40                          | 10.05               |
| 800                         | 16.00                          | 5.50                | 10.50           | 20.55                          | 10.05               |
| 900                         | 16.15                          | 5.50                | 10.65           | 20.65                          | 10.00               |
| 1000                        | 16.25                          | 5.50                | 10.75           | 20.75                          | 10.00               |
| 1100                        | 16.35                          | 5.50                | 10.85           | 20.85                          | 10.00               |
| 1200                        | 16.40                          | 5.50                | 10.90           | 20.90                          | 10.00               |





PER CENT OF LIST PRICE





[fol. 1046]

## Schedule 5

Calculation of Allowable Discount to A & P Store #915,  
Week Ending January 14, 1956

Note: Point volume and list price excludes butter, eggs, Gayemont cheese and bottle deposits and credits, which are not considered in discount calculations.

|   |           |
|---|-----------|
| 1. Points purchased during the week                     | 3007      |
| 2. Average daily points (3007 ÷ 6)                      | 501       |
| 3. Allowed discount rate (Reference: Schedules 3 and 4) | 10 10%    |
| 4. Total list price (See page 2 of 2)                   | \$612 795 |
| 5. Calculated allowable discount (line 3 × line 4)      | \$ 61 89  |

[fol. 1047]

## Schedule 5

## Sales to A &amp; P Store #915, Week Ending January 14, 1956

| (g) Glass<br>Item (f) Fiber                                  | Quantity(1) | Unit (2)<br>List<br>Price | Unit<br>Point<br>Value |
|--|-------------|---------------------------|------------------------|
| 1/2 gallon Energee (g)                                       | 12          | \$ 35                     | 2                      |
| Gallon milk (g)  | 117         | 74                        | 4                      |
| Quart eggnog (g)   | 20          | 45                        | 4                      |
| Special container sour cream (g)                             | 6           | 33                        | 1                      |
| Whip dispenser (f)   | 10          | 44                        | 1                      |
| 1/2 pint sour cream (f)                                      | 18          | 27                        | 1                      |
| Quart Dari-Rich (f)  | 11          | 25                        | 1                      |
| Quart buttermilk (f)   | 73          | 20                        | 1                      |
| 1/2 pint whipping cream (f)                                  | 20          | 31                        | 1                      |
| 1/2 pint cream (f)   | 7           | 285                       | 1                      |
| Pint half and half (f)                                       | 274         | 30                        | 1                      |
| Quart sta-slim (f)   | 80          | 19                        | 1                      |
| Quart milk (f)   | 820         | 20                        | 1                      |
| 1/2 gallon milk (f)  | 558         | 385                       | 2                      |
| No butter, eggs, or Gayemont cheese were sold to this store. |             |                           |                        |
| Totals   |             | \$612 795                 | 3007                   |

(1) Source: Summary bills to A &amp; P, week ending January 14, 1956.

(2) Chain store price list (Form #M 54), Revision #252, January 9, 1956.

[fol. 1048]

## Schedule 6

Summary of Allowable Discounts to A & P and Kroger Stores  
in the Chicago Area (1)

|                                     | A & P       | Kroger      |
|-------------------------------------|-------------|-------------|
| 1. Total list price                 | \$29,967 59 | \$28,740 78 |
| 2. Calculated allowed discount (\$) | 3,001 13    | 2,875 65    |
| (%)                                 | 10 01%      | 10 01%      |

(1) A & P—41 Stores  
Kroger—47 Stores

[fol. 1049] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF  
ILLINOIS, EASTERN DIVISION

No. 51 C 947

[Title omitted]

MOTION OF DEFENDANT THE BORDEN COMPANY TO STRIKE  
CERTAIN TESTIMONY—Filed May 9, 1958

Now comes defendant The Borden Company by its attorneys, Stuart S. Ball and H. Blair White, and move the Court to strike the proposed testimony of the expert witnesses Herbert F. Taggart, Albert E. Sawyer and Otto F. Taylor, or, in the alternative, to order the plaintiff to produce the following documents for the use of this defendant in further cross-examination by deposition of said witnesses:

- (a) Government memoranda identified on Exhibit 1 attached hereto as "Analysis of cost and price differences based on Bowman data (January 18, 1957)."
- (b) Government memoranda identified on Exhibit 1 as "Cost defense analysis September 25, 1956."
- [fol. 1050] (c) All correspondence and documents plaintiff received from each of said witnesses which relate to their proposed testimony in this cause.
- (d) Copies of all correspondence and documents plaintiff forwarded to each of said witnesses which relate to their proposed testimony in this cause.

In support of this motion, this defendant states:

1. On November 8, 1955 this Court entered the Supplemental Pre-Trial Order which presented plaintiff's case in chief support of the alleged violations of the Robinson-Patman Act.

2. On September 19, 1957 this Court entered the Additional Pre-Trial Order which contained Borden's defense to plaintiff's allegations. The Order set forth Borden's Store Customer Cost Survey.

3. In January 1958 plaintiff submitted to Borden a proposed Rebuttal Pre-Trial Order which contains the testimony of plaintiff's expert witnesses, Messrs. Taggart, Sawyer and Taylor. Paragraphs 10, 12 and 14 state that these expert witnesses reviewed "plaintiff's pre-trial order, the preliminary drafts of Borden's pre-trial order, the deposition of Mr. Joseph F. Malone, and the defendant's counsel's abstract of this deposition." The remainder of these paragraphs presents the purported expert opinions of these witnesses with respect to "the principle underlying a properly conceived system of distribution cost accounting and allocation compatible with the requirements of the Robinson-Patman Act."

[fol.1051] 4. At the pre-trial conference on March 14, 1958 it was agreed that the proposed Rebuttal Pre-Trial Order would be offered by plaintiff as the direct testimony of Messrs. Taggart, Sawyer and Taylor and that these expert witnesses were to be cross-examined by deposition. The cross-examination by deposition was to be condensed and placed in the final draft of the Rebuttal Pre-Trial Order as further testimony of said witnesses.

5. The depositions of the witnesses Taggart, Sawyer and Taylor were commenced, respectively, on April 14, 16 and 28.

6. On deposition each of these expert witnesses stated that he had no knowledge of the facts of this case or of distribution costs in the dairy industry other than those furnished to him by counsel for the plaintiff or by Elliott B. Woolley, another expert witness for plaintiff.

7. On deposition each of the witnesses testified that plaintiff submitted the documents listed on Exhibit 1 for his expert examination and opinion; that the memoranda listed above in paragraphs (a) and (b) were prepared by Mr. Woolley and contained statements of fact; that the witness returned all the documents to plaintiff; that his opinion was based in part upon all of the documents examined; and that he exchanged certain correspondence and memoranda with plaintiff's witness Woolley prior to the final draft of his testimony.

8. Exhibit 1 shows that each of the witnesses examined

documents in addition to the documents listed in paragraphs 10, 12 and 14 of the proposed Rebuttal Pre-Trial Order.

[fol. 1052] 9. Each of the witnesses stated that he could not remember the content of the various documents submitted to him by the plaintiff.

10. During each deposition counsel for Borden requested plaintiff to produce the documents listed above in paragraphs a through d for use in examining the expert witness as to the facts on which he based his opinions. Plaintiff's counsel refused to produce the documents on the grounds either that they were privileged "work product" or that it was "against the policy of the Department of Justice" to produce such material.

11. Plaintiff's refusal to produce the documents denied Borden an opportunity to cross-examine the expert witnesses concerning all of the facts on which they based their opinions. Plaintiff's refusal also results in the omission from the record of the complete facts on which the opinions expressed were based, and thus renders the opinions incompetent as evidence.

The foregoing motion goes to the foundation of the proposed testimony of the expert witnesses Taggart, Sawyer and Taylor and is submitted at this time to enable plaintiff to cure the defect by producing the documents for use in further cross-examination. Due to the past directions of this Court, this motion does not raise all objections pertaining to the competency, relevancy and materiality of the proposed testimony. Accordingly, Borden's other [fol. 1053] grounds for objecting to said testimony have been reserved for presentation in its brief to be submitted at the close of all of the evidence.

In its brief, for example, Borden will contend that the evidence is incompetent because based in part upon undisclosed oral statements of purported facts made to the witnesses Taggart, Sawyer and Taylor by plaintiff's other witness Woolley. Borden will also contend that the evidence is incompetent because based upon or compounded with opinions as to the law and other matters outside the scope of opinion evidence and because based on an incom-

plete disclosure of material facts; but these are matters as to which no immediate corrective action can be taken by either party.

Respectfully submitted, /s/ Stuart S. Ball. /s/ H.  
Blair White, Attorneys for defendant The Borden  
Company.

Of Counsel: Sidley, Austin, Burgess & Smith, 11 South  
LaSalle Street, Chicago 3, Illinois STate 2-5400.

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[fol. 1053a] [File endorsement omitted.]

[fol. 1054] IN UNITED STATES DISTRICT COURT NORTHERN  
DISTRICT OF ILLINOIS EASTERN DIVISION

No. 51 C 947

[Title omitted]

**Transcript of Proceedings of May 16, 1958**

Transcript of proceedings had at the pre-trial conference in the above-entitled cause before Hon. William J. Campbell, one of the Judges of said Court, in his jury room, United States Courthouse, Chicago, Illinois, on Friday, May 16, 1958, at 2:00 o'clock, p.m.

**PRESENT:**

Mr. Earl Jinkinson, Mr. Bertram Long, and Mr. Elliott B. Woolley, On behalf of the Government.

Mr. Stuart S. Ball, and Mr. Joseph Greaves, On behalf of defendants The Borden Company and Belmont Dairy Company.

Mr. John P. Stevens, On behalf of the defendants Bowman Dairy Company and Ridgeview Farms Dairy, Inc.

[fol. 1055] The Court: Shall we dispose of your motion first? Or have you done so?

Mr. Ball: The motion has served one purpose. It has gotten us a long brief which the Government has served us with today. It is very educational, even though hardly relevant.

Mr. Jinkinson: It is ten pages. I don't think you can characterize any brief of the Anti-Trust Department of ten pages as being long.

The Court: I should say this sets an all time low for the Anti-Trust Division. Whether or not it is relevant is something else.

Mr. Ball: Perhaps if I take a minute to explain to the Court what our problem is?

The Court: Yes.

Mr. Ball: The procedure we are following I think presents us all with a rather unusual question.

The Court: Yes.

Mr. Ball: If we were to deal with the problem of the expert witness being called at the trial, you would assume that perhaps the matter would be set forth to him in the form of a hypothetical question in which you could then [fol. 1056] measure the elements of the hypothetical question against the record and you could question whether or not this fact or that fact would change the situation or in some other way a basic way of testing the validity of an opinion and find out exactly what factual information on which it is based.

Now, we had the situation that may have been inevitable on the Government's part, but Mr. Woolley was in communication with the three witnesses that were called as experts. Each one of the three made a statement that they received certain documentary information which contained certain factual information. That, without whether they remembered what the facts were, we can assume were the facts upon which they based their opinion.

However, both or all three of the witnesses said that they also wanted some documentary and the information they received was a memorandum from Mr. Woolley.

They also said in this memorandum—there were two memorandums, one with respect to the Borden and one with respect to the Bowman situation.

They also said that in these memoranda there were certain statements of fact. All of them said they could not [fol. 1057] remember exactly what it was that was said to them in these documents.

They also had some correspondence back and forth with Mr. Woolley which I think in one case at least, and probably two, they said there was some factual information that was mentioned or discussed in the letters.

Now, we are in this position. We could sit back and assuage relief for briefs and argument and say that those opinions are totally no good because they are based in part upon facts that we had no opportunity to file to be able to ask the proper questions and appraise what effect the facts not known to us had upon the opinions.

It has seemed to us instead of letting this issue, however, go to the filing of briefs when if the Court would say yes that conceding the facts destroys the validity of those opinions, it was more consonant with the spirit of

our proceeding that we suddenly brought it to the attention of the Court and threshed the problem out in this way and that is the purport of the motion.

What we are saying is that we feel that no opinion [fol. 1058] evidence can really be accepted when it is based upon facts, the exact nature of which cannot be ascertained or not known to the person who cross examined the expert about the facts upon which he bases his opinion.

The Court: But the uncertain nature of the facts, if it be uncertain——

Mr. Ball: Yes.

The Court: —is apparent.

Mr. Ball: Yes, it is.

The Court: And all opinion testimony is in effect invading the province of the trier of facts, anyway.

Mr. Ball: Yes.

The Court: Doesn't it resolve itself pretty largely to a matter of argument? I mean, this is one of the elements that I should expect you to argue.

Mr. Ball: It is.

The Court: In arguing the value to be given the opinion of this particular expert.

I will tell you why I say this. I would like very much to conclude this case on the basis that we have been going along thus far.

Mr. Ball: Yes.

The Court: I have never had thus far to say in an Anti-Trust case what I have said in many criminal cases [fol. 1059] and in many patent cases. That is, since I as the trier of the facts in a patent case, and the jury as the trier of the facts in the criminal cases, I am not going to be too much impressed with the expert testimony, since it is my conclusion in effect ultimately that you have to get along with, as bad as it may be and that I will limit you to one expert per side in a patent case, and one alienist per side in a criminal case, and then instruct the jury that they do not have to believe either alienist. That is what I usually do in a criminal case.

I do not like to do that here but I cite this merely to tell you that I regard this type of testimony, Mr. Ball, whether it be on your side or on the Government's side, in the same general category as opinion evidence.



Now, when one argues the value of the opinion one must, of course, be impressed with the ability of the man forming the opinion on the subject on which he is opinionated and the facts on which he bases his opinion.

Now, the facts or absence thereof are known to you sufficiently, I think, to argue the weight of his opinion and I [fol. 1060] would rather not open this up. There is only one other answer to this and that is for me to put their expert on the stand and let you cross examination him. And once we start that and now we have gotten this far without that, but once we start that we are liable to drag this thing out further than it has been dragged already. I don't like that.

Mr. Ball: I am not at all in disagreement with the Court's approach. I think perhaps I have not made the one point clear. If we had the witness on the stand and we would bring out from the witness that his opinion was certainly based on certain facts or information received in a piece of paper, that he can't remember exactly what those facts were but he does know that those facts entered into it.

The Court: Entered into his conclusion.

Mr. Ball: Yes. Then I would object at that time to the competency of the opinion. The Court then would have the chance to give the ruling on the weight of that and the Government would have the opportunity at that time, if the Court decided the witness did not carry weight, of correcting that by saying, "Oh, here, we furnished the information so that you can complete your cross examination."

[fol. 1061] Now, the purpose of our motion really was to bring this to your attention in one form or another so that it cannot be said we were taking unfair advantage by not making our point at such time that the Government corrects the objection that we are going to make on this argument. Now, that is really the purpose of the procedure.

The Court: I think rather than an objection on the argument, what you should say is that the Government could correct or remove, rather, the basis of one argument that you are going to make.

Mr. Ball: That is right; that is right.

## DENIAL OF BORDEN'S MOTION TO STRIKE CERTAIN TESTIMONY

The Court: Now, the Government apparently would rather not do so. I would not in this stage of the proceedings put the expert on the stand, and I have gone through this explanation more or less to tell you that I think you have made your point and largely on procedural grounds I am going to deny your motion.

Mr. Ball: That is quite acceptable to us and the matter of fact is I think it should be known that we debated whether we shouldn't just wait and make the point on the briefs, and we are perfectly content to do that, but we have now given notice to the Government—

The Court: Precisely, and that is an argument that you [fol. 1062] are going to make to the weight of this testimony.

Mr. Ball: That is right.

The Court: All right. They are so notified and with that in mind I am going to deny your motion.

[fol. 1063] Mr. Ball: May we have this record show that since our motion is in the alternative, one to produce and the other to strike the testimony—

The Court: Yes.

Mr. Ball: —that the motion to strike the testimony—

The Court: Is denied without prejudice to your asserting your objection to its admissibility in your final brief.

Mr. Ball: Yes.

The Court: If that is not clear in the record, let it now be made clear.

[fol. 1064] IN UNITED STATES DISTRICT COURT, NORTHERN  
DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 51 C 947

[Title omitted]

**Plaintiff's Rebuttal Pre-Trial Order as to the Borden Com-  
pany--December 16, 1958**

The Court, pursuant to Rule 16 of the Federal Rules of Civil Procedure, having held pre-trial conferences from time to time, and the plaintiff and the defendant The Borden Company (hereinafter called "Borden") having come to certain agreements in the course of said conferences.

It is Ordered:

1. This order pertains only to the plaintiff and the defendant Borden.
2. The introduction of evidence under any and all of said agreements is made without agreement as to the weight of such matters and subject to the objection reserved by the plaintiff and the defendant Borden that the evidence sought to be introduced is immaterial or irrelevant, and the [fol. 1065] same reservation and objection shall apply to all stipulations, agreements, and admissions of fact contained in this order.
3. This rebuttal pre-trial order and all matters herein referred to and all admissions of fact and agreements with respect to the further trial of this action shall be used for no other purpose than the trial of this action and are made solely for the purposes of this trial.
4. The testimony of Herbert F. Taggart, Otto F. Taylor, Albert E. Sawyer, and Elliott B. Woolley, as set forth in this order, is subject to correction, explanation, or amplification by reference, on behalf of either party, to the depositions of these four individuals, which are filed in this case and constitute a part of this record.
5. Either party in briefs and arguments may refer to and quote material appearing in any article or publication written or edited by Messrs. Taggart, Taylor, and Sawyer, which were referred to in their respective depositions, with-

cut the necessity of identifying or introducing said articles into the record in this case.

. . . . .

[fol. 1066]      B. Borden Cost Defense <sup>2</sup>

10. Professor Herbert F. Taggart if called to the stand as a rebuttal witness for the plaintiff would testify as follows:

I am a professor of accounting and formerly Assistant Dean, School of Business Administration, University of Michigan, Ann Arbor, Michigan, and have held other teaching positions at Kansas University and the University of California. I am a graduate of the University of Michigan with a Ph. D. degree in Economics. I am a certified public accountant, State of Michigan, and since 1929 have engaged in the private consulting practice of accounting, especially in connection with pricing problems.

I have held the following positions: Chief, Cost Accounting Unit, Research and Planning Division, National Recovery Administration, Washington, D. C., 1933-1935; Consultant on Distribution Costs, Department of Commerce, 1938-1939; Director of Accounting and Assistant Administrator, Office of Price Administration, 1940-1943; Chief, Contract Termination Section, Audit Division, Office of the Fiscal Director, Army of the United States, 1943-1946; Consultant on accounting problems to ECA, Air Force, and other government departments; Chairman, Advisory Committee on Cost Justification under the Robinson-Patman Act, Federal Trade Commission, 1953-1956.

I am currently a member of the following professional organizations: American Institute of Certified Public Accountants; Michigan Association of Certified Public Accountants; National Association of Cost Accountants (President, Washington Chapter, 1945; National Director, 1947-1948); American Accounting As-

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<sup>2</sup> Exhibits and tables referred to in this section are in the accompanying Folder B.

sociation (President, 1942); and Controllors Institute of America (associate member).

I have written the following books and articles: *Minimum Prices under the N.R.A.*; *The Cost Principle in Minimum Price Regulation*; *Distribution Cost Accounting for Wholesaling*; Sections on distribution costs in the second and third editions of the Accountants' Handbook; and many articles in professional journals, including especially "The Standard Brands Case," in the *N.A.C.A. Bulletin* for October 15, 1939.

11. Professor Taggart would further testify that representatives of plaintiff conferred with him in June and July of 1957 and tendered for his review a copy of the plaintiff's Supplemental Pre-Trial Order—Borden, the preliminary draft of defendant Borden's Additional Pre-Trial Order, the deposition of Mr. Joseph F. Malone, and defendant counsel's abstract of this deposition. With regard to the principles underlying a properly conceived system of distribution cost accounting and allocation compatible with the requirements of the Robinson-Patman Act, he would testify substantially as follows that:

- (a) The field of distribution involves a multiplicity of functions, each of which is inherently different with respect to purpose and the economic conditions applicable thereto. Each of these functional activities with its attending economic conditions peculiar to it will engender different cost elements.
- [fol. 1068] (b) Because of the foregoing inherent characteristics of the distribution function, each cost element (or homogeneous grouping of same) should be identified and analyzed separately to ascertain the various economic conditions and factors which create such cost and then be allocated to its sources (functions, products, and customers) in relation to its respective factor or combination of factors creating it. This general principle is in harmony with the requirements of the Robinson-Patman Act accounting objectives.
- (c) Central Office Expenses, omitted by Defendant Borden, consisting of the time of the executives and their office staff spent in obtaining and main-

taining customer accounts, should be determined and allocated to the respective store customers in proportion to the use of this time among them.

- (d) The route drivers perform two functions identified as:

(1) The service function in which the driver performs certain services at and in the store of the wholesale customers, other activities relating to determining the store's needs for the day, and to do the necessary route bookkeeping, and loading and unloading at platform; and

(2) The transportation function which is necessarily involved in moving the goods from the platform to the wholesale customers on the route. A portion of driver's time is necessarily involved in this function.

- (e) In view of the nature of his service function as thus defined in (d), the driver's salaries and wages (including personnel benefits and vacation costs) should be prorated to the driver's service function and his transportation function on the basis of an appropriate time study, which includes the time from the platform to, at, and in each store and return to the platform, the time spent on route bookkeeping, the time spent determining the day's requirements, and the time spent on daily reports.

- (f) The driver service costs then should be allocated among the store customers on the basis of the time study of his activities performed only at and in the stores of the customers on the routes, including time spent preparing and checking orders, loading and unloading at platform, and other route bookkeeping tasks.

- [fol. 1069] (g) Transportation costs must include not only the cost of operating the vehicle involved, but also the driver's wages apportioned to the transportation function as defined in paragraph (d) above. Such total transportation costs will most logically be allocated to the stores on the basis of their respective volumes delivered. With respect

to transportation costs, customers on delivery routes are responsible for truck operating expense in proportion to their physical volume of purchases.

- (h) It is apparent from paragraph 196 MD of Borden's Additional Pre-Trial Order, drivers do exercise some influence on volume delivered, and that such commissions should be allocated to the store customers on the basis of volume of product delivered to each. Under this procedure, commissions would be essentially a direct charge exactly determinable for each customer on every route. To justify allocating commissions on any other basis would require a definite showing that such direct charge produces inequitable or illogical results. If an expense is such that it would be eliminated if the customers were dropped, it is hard to say that it is not a specific cost to that customer.

12. Albert E. Sawyer, of the firm of Sawyer & Marion in New York City, if called to the stand as a rebuttal witness for the plaintiff, would testify that he has the educational and professional background substantially as follows:

He received a Bachelor of Law, June 1929, University of Michigan Law School and engaged in pre-law studies at the College of Literature, Science and the Arts, University of Michigan, completed June 1924.

His professional experience consists of:

Factory accountant for the Dort Motor Car Company, Flint, Michigan, (1918 through 1923);

Employed on a part-time basis as an accountant on the administrative staff of the University of Michigan (September 1923 to November 1927);

[fol. 1070] At the special request of Dr. Clarence C. Little, then president of the University of Michigan, he accepted the assignment on a full time basis to reorganize all *business and accounting procedures* incident to the administration of the University Hospital (November 1927 to October 1928);

He was retained as management consultant by the Women's Hospital, Detroit, Michigan; Toronto General Hospital, Toronto, Canada; and Presbyterian Hos-



pital, New York City, New York (October 1928 through 1930);

*Legal Assistant* to Henry S. Dennison, president of the Dennison Manufacturing Company, Framingham, Massachusetts. His work with this company constituted a series of special assignments to study and report upon the adaptation of the company's organization and distribution policies to legal and economic changes growing out of the financial and business depression of the early 1930's. Among these assignments were, first, the coordination of the company's participation in some sixteen codes of fair competition under the National Recovery Administration, second, a comprehensive study of the company's distribution practices under the Robinson-Patman Act (March 1931 to August 1938);

He was associated with the law firm of Wise, Corlett and Canfield. From the inception of this work he assumed several substantial assignments in connection with anti-trust matters (August 1938 to November 1939);

Washington associate of the firm of Wise, Corlett and Canfield. He was associated with this firm as a *consultant in accounting, economic and industrial organization problems* and as *practicing attorney* (November 1939 to December 1943);

Formed *law partnership* with Clarence K. Marion under style "Sawyer & Marion" with offices at 1624 Eye Street, N.W., Washington 6, D. C. (December 1948 to date).

His present responsibilities are as he states:

Since October 1, 1945 I have maintained an office at 56 Beaver Street, New York 4, New York staffed with accountants and statisticians to aid me in my assignments in economic, statistical and accounting research related to litigation in the anti-trust field. [fol. 1071] This phase of my work is carried on since 1951 as a partnership under the style *Albert E. Sawyer Company*, with Clarence K. Marion as partner.

The nature of my law practice has remained the same since my admission to the Bar of the District of



Columbia in 1939. It is a specialized practice which has evolved logically from my experience in cost accounting and business management and industrial organization to which I applied my legal training. My practice concerns itself almost exclusively with laws and regulations affecting manufacturing businesses and these, in turn, with a few exceptions are federal statutes and regulations affecting inter-state commerce. I have been retained in administrative proceedings before the Federal Trade Commission, Fair Labor Standards Administrator, National Labor Relations Board, War Labor Board, U. S. Emergency Court of Appeals, Office of Price Administration, and as counsel to special committees serving the War Production Board, and the Office of Price Administration. I am retained from time to time in criminal and civil suits instituted by the Department of Justice under the Sherman Act and other anti-trust laws. I am retained from time to time in private litigation under such laws. I have represented both plaintiffs and defendants in these matters. My particular forte in connection with this type of practice lies in the combination of legal training and practical business and accounting experience which gives me added facility in the analysis of business problems arising under these laws and regulations, and the development and presentation of accounting and statistical information arising under such laws. In this type of work I am frequently retained by New York and Washington attorneys as special counsel and by government agencies. I am retained by several companies as special counsel, supplementing general counsel in problems arising from the above field of practice.

The various assignments in the anti-trust field have necessitated extensive studies in the following industries: flat glass, specialty glass, rubber, petroleum, rugs and carpets, banking and securities, cordage, automobile parts, pianos, many different branches of the paper industry and industries using paper as their principal raw material, electrical manufacturing, food processing, chemical, rayon, sand & gravel and various miscellaneous manufacturing organizations.

[fol. 1072] My work has involved extensive studies in the field. I have organized and directed a large staff of accountants and statisticians to collect original data in the field which is later analyzed and presented for use in litigation. My field studies have included personal examination of many different types of sales solicitation effort, the methods of planning used in such work, comparative costs, maintenance of jobbers stocks, relative efficiency of different methods of warehousing manufactured goods for the most effective national distribution. Through this work I have become intimately acquainted with the manufacturer's problems of national distribution and the methods of analyzing such work.

My experience has also included a substantial effort in the analysis of manufacturing processes, particularly in studies designed to reveal cost savings due to different methods of manufacturing.

I have been called upon from time to time to study the effectiveness of organizations operated by academic and governmental bodies such as the University of Michigan Hospital; Women's Hospital, Detroit, Michigan; Toronto General Hospital, Toronto, Canada; Columbia University Hospital, New York, N. Y.

Each year for the past twenty-five years I have been called upon for several addresses and lectures before business, accounting and legal groups such as Comptrollers Institute, National Association of Cost Accountants, New York State Bar Association, Trade and Commerce Bar Association, University of Michigan School of Business, Harvard Business School, Harvard Law School, George Washington University Law School, University of Michigan Law School, and the Trade and Industry Law Institute and the Practicing Law Institute of New York.

The more important assignments involving both legal and business analysis are:

F.T.C. vs. Book Paper Association—in charge of development of statistical defense of methods of distribution;

F.T.C. vs. Standard Brands, Inc.—special counsel upon appeal. Developed and presented extensive statistical

and accounting proof of justification of quantity differential rates under Robinson-Patman Act;  
 [fol. 1073] F.T.C. vs. Tag Manufacturers Institute—  
 in general charge of entire case and counsel for all  
 respondents. Complaint and Order Dismissed upon  
 Appeal;

General counsel for Gummed Industries Association  
 (1939 to date);

General counsel for Waterproof Paper Manufacturers  
 Association (1945 to date);

General counsel for Industrial Bag and Cover Associa-  
 tion (1950 to date);

General counsel for Rubber Heel and Sole Institute  
 (1944 to date);

General counsel for the Textile Bag Manufacturers  
 Association (1949 to date);

Public service—member of the Attorney General's  
 National Committee to study the antitrust laws; mem-  
 ber of the Federal Trade Commission Advisory Com-  
 mittee on cost justification.

He has authored the following publications:

"The Control of Industrial Costs"

Year Book of National Association of Cost Account-  
 ants—1938;

"Cost Accounting Opportunities under the Robinson-  
 Patman Act"

Bulletin: National Association of Cost Accountants  
 Vol. XVIII, No. 12—February 15, 1937;

"Cost Accounting as Evidence in Cases Arising Under  
 the Robinson-Patman Act"

Bulletin: National Association of Cost Accountants  
 Vol. XIX, No. 12—February 15, 1948;

"Accounting and Distribution Techniques as Voluntary  
 Devices to Eliminate Abuses in Marketing"

The Accounting Review—June 1939;

"Round Table Discussion of the Robinson-Patman  
 Act"

Year Book of National Association of Cost Account-  
 ants—1938;

[fol. 1074] "The Commission's Administration of

Paragraph 2(a) of the Robinson-Patman Act: An Appraisal."

The George Washington Law Review—January-February 1940

A special symposium commemorating the 25th anniversary of the Federal Trade Commission;

"Robinson-Patman Act Symposium"

Commerce Clearing House, Inc., Publishers of Topical Law Reports—1948;

"Uniform Delivered Price, Under Recent Court Decisions, 1948"

Institute of Trade and Commerce Professions

Current Business Studies No. 1;

"Accounting and Statistical Proof in Price Discrimination Cases"

Iowa Law Review, Vol. 36, No. 2 Winter 1951;

McGraw-Hill Executive Course in Profitable Business Management

J. K. Lasser—Albert E. Sawyer.

He has membership in the following professional societies:

American Bar Association—Member Committee on F.T.C.;

Bar Association of the District of Columbia;

Society of Business Advisory Professions, Inc. (President 1953)—Chairman of the Board 1954—Director 1949—to date;

National Industrial Conference Board;

American Economic Association;

American Marketing Association;

American Statistical Association;

The Business Historical Association, Cambridge, Massachusetts;

National Association of Cost Accountants.

13. Mr. Sawyer would further testify that representatives of plaintiff conferred with him during July-September of 1957 and tendered for his review a copy of the plaintiff's Supplemental Pre-Trial Order-Borden, the preliminary draft of defendant Borden's Pre-Trial Order, the deposition of Mr. Joseph F. Malone, and defendant counsel's abstract

[fol. 1075] of this deposition. With regard to the principles underlying a properly conceived system of distribution cost accounting and allocation compatible with the requirements of the Robinson-Patman Act, he would testify substantially as follows that:

- (a) The costs that are eligible for consideration under the cost proviso of Section 2(a) of the Robinson-Patman Amendment to the Clayton Act are those which result from certain differences in the procedure of dealing with particular purchasers or classes of purchasers, to wit, those paying the higher of two prices and those paying the lower. The excuse or justification for the two prices rests in a difference either in *quantity* purchased or *method* of sale or delivery. Each of the differing methods or quantities must be assigned a cost—a *partial cost*—of the total operation of producing, selling, and delivering the products in question. The field of inquiry is further narrowed by requiring the differing methods to be related to particular customers or classes of customers receiving the differing treatment on the part of the seller.
- (b) So circumscribed and delimited, the application of this proviso deals with a highly synthetic concept which has little or no direct relationship to ordinary every day steps taken in recording the transactions which constitute the selling and delivering of products to customers. "Robinson-Patman Accounting" must, therefore, be distinguished from cost accounting in the ordinary course of business in that it is not a matter of record keeping on a day to day basis and provable as such, but consists essentially of numerous series of estimates, the validity of which rests, in large measure, upon the standard of care and good faith which brings them into being.
- (c) Where alternative methods of allocation are available, the considerations which dictated the ultimate choice should be stated as a part of the direct presentation of the justification. If there is reliance upon historical precedence in the particular business or trade, the validity of the continued use

of the precedent should be justified. Experience has dictated that so-called "normal and accepted accounting practices" used for management purposes [fol. 1076] poses, or other general every day purposes, are not necessarily applicable for the purposes dictated by the Robinson-Patman Act.

- (d) In segregating distribution costs for cost justification purposes, the functional approach is to be preferred although other approaches may be appropriate under some cost categories, costs are then subdivided into two groups. The first comprises those costs which are readily defined as directly applicable to a given functional segment. This involves no problem of allocation as between two or more segments.
- (e) The costs of functions which are not chargeable directly must be assigned by allocation. The process of allocation involves the measurement of the activity or output of the function in terms of appropriate units and then applying to each business segment the amount of the functional cost which is in proportion to its use of or responsibility for the units of functional service. The choice of the appropriate service unit which will adequately measure indirectly related functions to the costing segments is crucial to the validity of the results of a cost justification study. The two main considerations in making this choice is rationality and practicality of the selection.
- (f) There is no single set of accounting principles by which to reach a determination of what constitutes "due allowance" for differences in the cost of distribution to one type of buyer as against other types. The care and reasonableness of the methods of allocation are paramount considerations. Where a particular method of allocation tends toward a bias in favor of the discount to be justified there is a special obligation upon the proponent to establish the soundness of the selection of method.
- (g) The cost justification of the discounts or price differentials employed by Borden in the sale of fluid milk involve a complex of joint cost relation-

ships which requires an allocation of internal costs among various classes of products and classes of customers. The problems of proof center upon the question whether such presentations as have been developed in justification of these differences [fol. 1077] tials, resting as they do in large measure upon the subjective qualities and judgments of the individuals who have executed or directed them, constitute acceptable evidence.

- (h) Borden's route drivers perform dual functions, one of which is the physical movement of fluid milk products from platform to the customer. In the performance of this function the route man is a truck driver and time devoted to the performance of this function should be allocated as an element of the transportation cost. The second function is the placement of the fluid milk products in the customer's place of business. This includes a variety of activities dependent upon the nature and location of the customer's business. In the performance of these activities the route man provides a service for the customer, more or less, depending upon the customer's requirements. Time devoted to these service activities should be accounted for as an element of customer service costs, and taken into account in the determination of the aforesaid transportation costs.
- (i) The allocation of transportation costs to customers provides a choice of methods, the choice being dependent upon whether the tonnage or volume carried directly affects the elements of transportation cost, i.e., the cost of operating the vehicle and the time consumed in driving it on the route. If this is the case then weight or bulk, whichever has the direct effect upon the cost, should become a factor in the allocation. Customers taking heavy weight or large bulk should bear proportionately heavier costs than those who take less.
- (j) The allocation of the drivers' costs for customer services performed is a matter of a time study reporting of the route man's time devoted to these activities on a customer basis. In grouping the



results of such studies into customer or discount classes the usual rules relating to proper averaging should be observed, i.e., of homogeneous classes.

- (k) Central overhead, or what is sometimes known as General Office Expense, includes broadly, billing, credits, and collection, general accounting and general administrative staff, and executives' time. Where the organization operates through numerous branches each with important central overhead [fol. 1078] functions these should be brought into this category of cost analysis. Many of the costs involved under this heading may readily be classified as of proportionate application to all discount classes, and therefore, outside of the scope of the justification study. Care should be taken to avoid a hasty determination of this condition. It is incumbent upon the proponent of a cost justification to ascertain if there are indirect costs among the general overhead accounts which tend to counteract savings claimed at other levels of distribution. Do the larger customers who benefit from larger discounts impose greater accounting burdens upon the seller by requiring special distribution reports or particularly burdensome billing techniques? *It is particularly incumbent upon the proponent of one of these studies to ascertain in some reasonable fashion the added cost in top administrative personnel required to solicit and maintain the business of the larger customers who enjoy the larger discounts.* This is seldom possible by ordinary appraisal methods. Time is seldom a relevant measure of such costs. *Where the calibre (and the salary) of the executive responsible for the larger units of business is conditioned upon his ability to get and to hold these accounts, the cost in added salary and expense should be allocated to those accounts.* The witness would state upon examination that in his professional capacity as advisor in these matters to many large corporations it is his practice to stress the importance of this aspect of the cost of getting big business and holding it, and to advise that a realistic study be



made and a careful appraisal of the added cost be undertaken. *His experience indicates that this element of cost is not de minimis and that in his judgment a cost justification may well be considered incomplete without a showing that this effort has been seriously made.*

In Borden's cost study, no attempt was made to allocate central office expenses as between chains and independent stores although the defendant conceded that the getting and holding of chain store business was the function of top management. The witness considers the failure to make these allocations and the further failure to explain such omissions other than to cite the fact that such allocations are difficult to make constitutes a significant weakness in Borden's cost study. *His professional experience has indicated such costs are not de minimis, and that a study is incomplete that does not make a reasonable allowance for such [fol. 1079] costs known to be applicable to the favored customer classification.*

- (1) As to driver's commissions, there would seem to be sufficient indication in Mr. Malone's opinion, as recorded in paragraph 196 MD of Borden's Additional Pre-Trial Order, to warrant the conclusion these costs were directly related to volume purchased by each customer. It then follows that these costs should have been allocated to each customer on a volume basis unless this could be demonstrated to be unfair or inequitable.

14. Otto F. Taylor of the firm of Bacon, Taylor & Beairisto, New York City, New York, if called to the stand as a rebuttal witness for the plaintiff, would testify substantially that his qualifications are as follows:

*Birthplace:*

Lawrence, Massachusetts

*Date of Birth:*

February 16, 1889

*Home Address:*

86 Blackburn Road, Summit, New Jersey

*Home Telephone:*

Crestview 7-2120

*Education:*

Academic—Dartmouth College, AB, 1910

Accountancy—Amos Tuck School of Business Administration, MCS, 1911.

*Certified Public Accountant Certificates:*

|             |      |
|-------------|------|
| New York    | 1919 |
| Connecticut | 1929 |
| New Jersey  | 1934 |

*[fol. 1080] Registered Municipal Accountant Certificate:*

|            |      |
|------------|------|
| New Jersey | 1935 |
|------------|------|

*Admissions to Practice:*

|                                  |      |
|----------------------------------|------|
| U. S. Treasury Department        | 1921 |
| U. S. Board of Tax Appeals       | 1924 |
| Securities & Exchange Commission | 1935 |

*Societies:*

|  |      |
|--|------|
| Phi Beta Kappa                           | 1910 |
| American Institute of Accountants        | 1920 |
| New York State Society of C.P.A.'s       | 1919 |
| New Jersey Society of C.P.A.'s           | 1934 |
| National Association of Cost Accountants | 1920 |
| American Management Association          | 1935 |

*War Service:*

First Lieutenant Air Service, 1917 to 1919

*Experience:*

Niles &amp; Niles, C.P.A.'s—Staff, 1911 to 1917

Haskins &amp; Sells, C.P.A.'s—Staff, 1919

Thomson & Black, Accountants and Engineers—  
Staff, 1920-1923

Otto F. Taylor, Principal, 1923 to 1927

Webster, Blanchard & Taylor, Partner, June 1, 1927  
to May 31, 1937

O. F. Taylor &amp; Co., Partner, June 1, 1937 to date

*Other:*

President, N. Y. Alumni Amos Tuck School of Business Administration

Director, Summit Trust Co.

Member, Federal Trade Commission Advisory Committee on Cost Justification

15. Mr. Taylor would testify further that in the months of July to September 1957, representatives of the plaintiff conferred with him and tendered for his review a copy of the plaintiff's Supplemental Pre-Trial Order, the preliminary drafts of Borden's Additional Pre-Trial Order, the [fol. 1081] deposition of Mr. Joseph F. Malone, and the defendant counsel's abstract of this deposition. With regard to the principles underlying a properly conceived system of distribution cost accounting and allocation compatible with the requirements of Section 2(a) of the Robinson-Patman Act, he would testify substantially as follows that:

- (a) Although the general principles of accounting applicable in any instance are the same, the techniques by which they are applied differ according to the purpose to be served. Cost accounting for management purposes, for example, may compare standards of performance with what actually occurs and explain the amount and sources of variation. On the other hand, cost justification under the Robinson-Patman Act is of an entirely different character. Such a study is for the purpose of comparing differences in prices of goods of like grade and quality sold to competing customers with relevant costs which result from differences in the method of sale, differences in the method of delivery and differences in the quantity. Inasmuch as price means, in ordinary terms, the money charged per unit, cost from a Robinson-Patman study must also be in terms of cost per unit or the equivalent.
- (b) The basic technique which the accountant will follow is that of long division. First of all he must find the dividends of his problems. These dividends will be the various categories of money

spent by a seller during a period of time, including all of those categories with respect to which variations in cost may occur by reason of the differences in quantity or in method of sale or delivery. All other kinds of expenses may well be excluded because they have no bearing on a cost justification problem. The important thing for the accountant to have in mind in this analysis of money spent is that each of the categories must be homogeneous whether they be products, classes of trade, customers or activities. The reason for this should be obvious when it is considered that cost accounting of necessity deals with averages, otherwise there would be no end of it; and averages to be useful must be averages of like items. The average weight of elephants and mice means nothing; neither does the average cost per minute of transporting goods and selling [fol. 1082] them. This analysis of expenditures is often referred to as "functional analysis" of expenses which means dividing expenses into separate parts, each part representing the cost of a certain homogeneous activity.

The next step in this task of long division is to find the proper divisors to be applied to the dividends. These divisors should be those units which for each individual function most nearly reflect or cause the variations in the amount spent. For example: if the dividend is the money cost of typing invoices, and if the amount of that cost varies according to the number of lines typed, then invoice lines is a proper divisor in that case. If truck transportation costs vary by distance, then mileage is a proper divisor for that cost category.

When the accountant has broken down the expenses of a period by functional groups, and has related to each of those groups the best available unit of measure, he is prepared to complete his long division example and state his quotient or series of quotients consisting of unit costs. The applicable unit costs may then be grouped, the

- total of them found, the difference calculated, and compared with the price difference in question.
- (c) Calculation of the cost differences which result from different quantities or methods of sale between competing retail stores should include the cost of executive time and expense attributable to securing and maintaining customer accounts and the salaries and expenses of billing, accounting, credit, statistical, and other office operations. If such costs may properly be allocated according to customer classes (for example, chain stores and others), and if one class (say chain stores), required a disproportionate amount of such services, then naturally the costs allocated to that class of customer would reflect that fact.
  - (d) The route drivers perform two functions identified as: the service function in which the driver performs certain services at and in the store of the customer, and the transportation function which is necessarily involved in moving the goods from the platform to the customers on the route, and in which a portion of the driver's time is necessarily involved.
- [fol. 1083] (e) In view of the nature of his service function, as defined above, the driver's salaries and wages (including personnel benefits and vacation costs) should be prorated to driver's service function and his transportation function on the basis of an appropriate time study, which includes the time from the platform to and at each store and return to the platform as well as the time spent on miscellaneous activities such as route bookkeeping, checking orders and daily reports, and loading and unloading at platform.
- (f) The driver service costs, as defined above, then should be allocated among the store customers on the basis of the time study of his activities performed at and in the stores of the customers on the routes, including time spent preparing and checking orders, loading and unloading at platform, and other route bookkeeping tasks.
  - (g) Transportation costs must include not only the

cost of operating the vehicle involved, but also the driver's wages apportioned to the transportation function as defined above. Such total transportation costs will most logically be allocated to the stores on the basis of their respective volumes delivered. With respect to transportation costs, customers on delivery routes are responsible for truck operating expenses in proportion to their physical volume purchased.

A route delivery truck in this business may well be looked upon as a moving warehouse and that the cost of moving it with its load should be allocated very much like the cost of a central warehouse; say, at the pasteurizing plant. Since the total quantity of fluid milk is not allocated to any one store until after the truck reaches that store, all of the cost of getting it there becomes merged and spread over the whole load. Such aggregated transportation cost may, therefore, be divided into parts only on a volume basis. Having reached the store the additional costs incurred at that location including the segregated portion of the driver's pay may properly be assigned to that particular store. It makes no difference whether this store is a chain store unit or an independent store, because it is not owners which compete but particular stores. One owner may have a lot of stores or only one but in this business finance is irrelevant.

[fol. 1084] (h) The allocation of joint costs involves the selection of units of measurement, or yardsticks as they are sometimes called. Frequently, the problem resolves itself into a choice between available units none of which is perfect. Good accounting practice dictates the selection of that basis which is most closely related to the activity or function the cost of which is being allocated. In the case of commissions paid to milk route drivers based on volume of products delivered, the correct basis of apportioning the cost among customers is obviously the relative volume delivered to individual stores. It could probably

be demonstrated that variations in any unit other than volume, such for example, as minutes at location, are less closely associated with variations in amount of commissions than are variations in volume delivered.

16. Elliott B. Woolley if called to the stand as a rebuttal witness for the plaintiff would testify as follows:

He was graduated from Leland Stanford University, Palo Alto, California in 1937, with an AB degree in economics, statistics, and mathematics. From 1940 to 1942, he engaged in graduate studies in economics, statistics, mathematics, and accounting while a resident in Washington, D. C. at American University and Graduate School of the United States Department of Agriculture. He has written an article for publication in the *Econometrica*, entitled "Method of Minimized Areas for Correlation Analysis." He has since 1937 been employed by the Federal Government in various capacities as statistician and economic analyst until 1948 at which time he was employed by the Antitrust Division of the Department of Justice as an economist and is at the present assigned to the Chicago field office.

17. Mr. Woolley would testify further that he has reviewed all of the material submitted by the defendant Borden pertaining to their offer of defense relating to the existence of competition and cost defense of price differences among their wholesale customers, and the existence of competition and cost defense of price differences among their bulk wholesale customers. He has conducted [fol. 1085] on behalf of the plaintiff a rebuttal mail questionnaire of the wholesale customers of the aforesaid sample stores and has analyzed the results as they relate to the question of competition which are presented in Section I-A of this rebuttal pre-trial order. He also has analyzed the defendant Borden's cost study as presented, the results of which are submitted in answer thereto in the paragraphs to follow. With regard to the principles underlying a properly conceived system of distribution cost accounting and allocation compatible with the requirements



of the Robinson-Patman Act, he would testify as follows: that he agrees in substance with the controlling principles of cost accounting, their application to, and criticism of the Borden cost defenses as stated by the foregoing three expert testimonies.

In addition, he would state that in his opinion total transportation cost is incurred by virtue of the prior existence of the customer demand that the fluid milk product be brought to them, rather than having each customer go to the platform himself. Hence, they are each proportionately responsible for the creation of this cost to Borden; obviously if none demanded such door delivery, this distribution transportation cost would not exist. Each truck has a volume capacity in which all the amounts of fluid milk to be delivered on that day's trip are carried. Each store customer participates in this total volume proportionately to the amount left that day. Since each store's orders occupy a proportionate amount of cubic space in the truck, the total transportation costs thereof should be equally [fol. 1086] applicable to each unit of volume of space so occupied. Hence, the only rational basis of allocation of this cost to the respective customers is in proportion to the volume of fluid milk products delivered to each. Each unit of volume will be charged the same rate of this total transportation cost, and will be most equitably allocated thereby to the store customers.

With regard to the proper allocation of commissions paid to the drivers, he would state that paragraph 181 and Schedule XXIV of Borden's Additional Pre-Trial Order demonstrate that the calculation of drivers' commissions, in conformity with the provisions of the "Milk Driver's Union Contract" (plaintiff's Rebuttal Exhibit X), is based on the total physical volume of fluid milk products delivered to the independent and general store customers on the route; and that each such store contributes its share of volume to that total. Furthermore, that paragraph 196 MD of Borden's Additional Pre-Trial Order demonstrates that in the opinion of Mr. Malone, the defendant Borden's expert,

... it is the practice of the wholesale routemen serving independent store customers to anticipate the total requirements of all his customers in preparing the



route order covering the entire route for the next day. It is also the practice of the wholesale routeman to anticipate the requirements of each individual store customer and, at the time of delivery, to leave quantities which, in the routeman's opinion, are sufficient to supply the daily sales needs of the customer. Mr. Malone states that there may be some minor exceptions to this practice but that this practice prevails in at least 95% of such locations served. There are no pre-orders by store customers.

[fol. 1087] Hence, it appears from these admissions that route drivers have some degree of control or influence over volume, and since the commission is paid on a progressive rate scale, it provides the incentive for the driver to use this control to maximize his volume delivered—limited only to customer demand experience and the opposing health requirement that fluid milk must be returned to the supplier for other non-fluid milk uses if not sold within three days. Since drivers can and do exercise some influence on volume delivered, then commissions paid them for such volume should be allocated to the store customers on the basis of volume of product delivered to each. Commissions are essentially by nature a direct charge exactly determinable for each customers on every route, because the elimination of, or variation in, the volume of any one customer will of necessity affect the amount of commissions paid to the driver.

Borden has computed distribution costs for all units of the chain customers collectively, whereas they have computed such costs for each independent discount class, which is essentially a classification of costs by volume or size of independent customer. Comparison of costs of such chains and independents is not statistically valid since they are not expressed in comparable classifications. It is a fundamental rule of statistical treatment of data that averages to have statistical meaning and validity in comparisons, must be based on comparable treatment and conditions. In the subject case, size of store is the important basis of classification for any valid comparison of costs and prices of both customer classes.

[fol. 1088] 18. In answer to paragraph 153 MD of de-

fendant Borden's Additional Pre-Trial Order, Borden supplied upon plaintiff's request the following additional data on the number of chain store units and the number of non-store customers served in each of the years from 1947 to 1956, inclusive, together with the number of independent stores, and the proportion of chain and independent volume delivered to chain stores, as follows:

[fol. 1088]

| Year      | Number of Customers Served |         |           | % Chain Volume of Total** Delivered |
|-----------|----------------------------|---------|-----------|-------------------------------------|
|           | Independents               | Chains* | Non-Store |                                     |
| 1947..... | 2,209                      | 305     | 1,744     | 31.3                                |
| 1948..... | 2,338                      | 298     | 1,757     | 33.4                                |
| 1949..... | 2,267                      | 290     | 1,696     | 37.7                                |
| 1950..... | 2,258                      | 283     | 1,773     | 40.7                                |
| 1951..... | 2,113                      | 281     | 1,782     | 41.6                                |
| 1952..... | 1,925                      | 277     | 1,667     | 42.6                                |
| 1953..... | 1,728                      | 274     | 1,663     | 49.5                                |
| 1954..... | 1,520                      | 256     | 1,718     | 55.4                                |
| 1955..... | 1,357                      | 110     | 1,814     | 53.2                                |
| 1956..... | 1,224                      | 112     | 1,695     | 42.1                                |

\* Includes A & P and Jewel companies, except Jewel was lost in 1955 and 1956.

\*\* Total of chain and independent volumes in year.

These are stores served by Borden's Chicago Milk Division in its Metropolitan Chicago serving area.

[fol. 1089] 19. In answer to paragraphs 82 MD to 276 of Borden's Additional Pre-Trial Order, plaintiff submits Plaintiff's Rebuttal Exhibit M in the accompanying Folder B, which graphically portrays the nature of the route driver's functions involved in Borden's distribution system, and the various cost centers which should be allocated separately in accordance with the foregoing applicable cost accounting principles consistent with the requirements of Section 2(a) of the Robinson-Patman Act. This exhibit shows for each cost center the economic factor or basis by which it should be allocated to Borden's store customer discount classes in harmony with said cost accounting principles.

20. In answer to paragraphs 82 MD to 276 of Borden's Additional Pre-Trial Order, plaintiff submits the information summarized on Table 8 in the accompanying Folder B. This information summarizes the distribution of the various economic factors used by Borden to allocate their various delivery cost elements among the relevant classes of whole-

sale customers and additional data not used by them. The data for "Total Driver Time" are derived from Schedules XXVI, XXVII, and XXIX of the Borden's Additional Pre-Trial Order, and represent the distribution of the total number of minutes consumed by all drivers driving to and from routes and the amount of time spent serving the stores on the route during the sample months of July and August 1955. The "Number of Stops" are from paragraph 202 of this same Borden Additional Pre-Trial Order and [fol. 1090] represent the number of stops made at each store on the route by the drivers during the sample months of July and August 1955. The "Number of Locations" are also from paragraph 202 of the Borden's Additional Pre-Trial Order and represent the number of customers served on the routes during the same sample months. These three factors are the sole basis Borden uses to allocate all direct delivery costs among the classes of stores: Drivers' wages and salaries, including personnel benefits and vacation costs, commissions, and cost of transportation. Special delivery costs are distributed on the basis of number of special delivery stops. The indirect labor costs consisting of salaries and wages (including personnel benefits and vacation costs) of office personnel in the Branch, Division, and District offices, were allocated, on the basis of separate time studies of each, to the chains versus independents as a whole; their allocation to the respective independent discount classes was on the basis of "number of customers." The "Number of Points Delivered" and the "Dollar Value of Sales" relate to the sample period of July and August 1955 and were supplied by Borden upon request of plaintiff as identified in Schedule XXXIV of the Borden's Additional Pre-Trial Order.

21. The plaintiff submits *Tables 9 and 10* in the accompanying Folder B, summarizing the results of Borden's allocation of direct and indirect delivery costs among the classes of wholesale customers based on their own system of allocation. *Table 9* summarizes the distribution of the relevant indirect costs of office personnel at the Branch, [fol. 1091] Division, and District offices, which were obtained from Schedule XXXIII and paragraphs 245 to 261 of the Borden's Additional Pre-Trial Order. *Table 10* incorporates the total of *Table 9* and the results of the dis-

tribution of Borden's direct delivery costs as allocated by Borden's system of allocation among the classes of customers. As shown on *Table 10*, the "Number of Points Delivered" are from *Table 8*. The "Direct Labor Costs" are from Schedules XXVI to XXIX of the Borden Pre-Trial Order. The "Special Delivery Costs" are from Schedule XXXI of the same order. The "Transportation Costs" are from Schedule XXXII of the same order. "Office Personnel Costs" are from *Table 9*. The "Loss on Returns" are from paragraphs 264 to 266 and the "Bad Debts" are from paragraphs 262 to 263 of the said order.

22. The Borden driver time study discloses that the principal source of cost difference between the chain and independent customers arises from the differential services rendered the independents but not the chains as shown on Schedules XXVI to XXIX of Borden's Additional Pre-Trial Order. Not all the independents themselves received all of these differential services on the sample day of their time study in 1955. This knowledge, that there results a cost savings to Borden when such differential services are not performed for the independent customer, which would justify greater discount than that which is granted them by the published Borden schedule of discounts in question, was never brought by Borden to the attention of their independent customers according to the record of this case.

[fol. 1092] 23. The plaintiff submits *Tables 11 and 12* in the accompanying Folder B, as further rebuttal evidence. *Table 11* summarizes the effects of segregating the route driver's service and transportation functional costs and the pro rata extractions of drivers' total commissions from the respective results, in accordance with the foregoing applicable principles of cost accounting required for purposes of the Robinson-Patman Act. The total drivers' costs consisting of average weekly drivers' wages and salaries (with personnel benefits and vacation pay) and drivers' commissions (\$10,148) are as stated in *Table 10* (column 2), but include the portion of such drivers' costs which are applicable to the transportation function. The drivers' costs applicable to the transportation function (columns 2 to 6, *Table 11*) are those defined in Item Nos. 25, 26, 31, 32, and 36 of paragraph 184 and the cost alloca-

tions for each as stated in Schedules XXVI, XXVIII, and XXIX of the Borden's Additional Pre-Trial Order. The totals of these drivers' costs of transportation time are deleted from the total drivers' costs to produce the required total cost of drivers' service time for each discount class. But these two classes of costs, as thus derived and separated, include their pro rata shares of total drivers' commissions which were proportionately deleted to yield the net drivers' costs, excluding commissions, for the drivers' service time and drivers' transportation time, respectively. *Table 12* shows the effect of reallocation of the drivers' commission expenses (\$10,148) and the total transportation costs (consisting of the vehicle costs and the [fol. 1093] drivers' costs of transportation time) on the basis of volume (point values of column 1, *Table 12*), in accordance with the foregoing applicable cost to accounting principles. The allocation of "Special Delivery Costs" and "All Other Costs," consisting of "Office Personnel Loss on Returns" and "Bad Debts," are as defined by the Additional Pre-Trial Order. (See footnotes to Tables 9 and 10.) The total and average unit delivery costs were then computed for each discount class. Rebuttal Exhibit N, in Folder B, is the Milk Wagon Drivers Union Agreement for May 1, 1953 to May 1, 1955.

[fol. 1094] Enter:

\_\_\_\_\_, United States District Judge.

Date: December 16, 1958.

[fol. 1095]

TABLE 8

Comparison of Distribution of Various Factors for Allocation of Borden Distribution Cost Elements by Classes of Store Customers

| Store<br>Discount<br>Classes    | Factor: Units                        |   |                                  |   |                                       | Percentage Distribution |                            |                     |                               |                                       |
|---------------------------------|--------------------------------------|---|----------------------------------|---|---------------------------------------|-------------------------|----------------------------|---------------------|-------------------------------|---------------------------------------|
|                                 | Total<br>Driver<br>Time <sup>1</sup> | No. of<br>Regular<br>Stops <sup>2</sup> | No. of<br>Locations <sup>3</sup> | No. of<br>Points<br>Delivered <sup>4</sup><br>(1,000) | Dollar<br>Value<br>Sales <sup>5</sup> | Total<br>Driver<br>Time | No. of<br>Regular<br>Stops | No. of<br>Customers | No. of<br>Points<br>Delivered | Dollar<br>Value<br>Sales <sup>6</sup> |
| Other <sup>2</sup> .....        | 17,332                               | 2,002                                   | 374                              | 86.3  | 18,579                                | 8.00                    | 15.6                       | 19.2                | 5.9                           | 5.9                                   |
| Independents:                   |                                      |   |                                  |   |                                       |                         |                            |                     |                               |                                       |
| 0%.....                         | 14,684                               | 2,138                                   | 392                              | 30.8  | 6,555                                 | 6.7                     | 16.7                       | 20.1                | 2.1                           | 2.1                                   |
| 2%.....                         | 45,591                               | 3,596                                   | 573                              | 157.5   | 33,051                                | 21.0                    | 28.1                       | 29.4                | 10.7                          | 10.6                                  |
| 3%.....                         | 37,753                               | 1,951                                   | 277                              | 171.3   | 35,899                                | 17.3                    | 15.2                       | 14.2                | 11.7                          | 11.5                                  |
| 4%.....                         | 21,231                               | 710                                     | 80                               | 110.9   | 23,168                                | 9.8                     | 5.6                        | 4.1                 | 7.5                           | 7.4                                   |
| Total.....                      | 119,259                              | 8,395                                   | 1,322                            | 470.5   | 98,673                                | 54.8                    | 65.6                       | 67.8                | 32.0                          | 31.6                                  |
| Chain Stores <sup>1</sup> ..... | 81,004                               | 2,412                                   | 254                              | 913.5   | 195,263                               | 37.2                    | 18.8                       | 13.0                | 62.1                          | 62.5                                  |
| Total.....                      | 217,595                              | 12,890                                  | 1,950                            | 1,470.3   | 312,515                               | 100.0                   | 100.0                      | 100.0               | 100.0                         | 100.0                                 |

<sup>1</sup> A & P and Jewel Stores.<sup>2</sup> Restaurants, cafeterias, etc.<sup>3</sup> Schedules XXVI, XXVII, and XXIX of Borden Pre-Trial Order, and are the total minutes in sample (July and August 1955).<sup>4</sup> Paragraph 202 of Borden Pre-Trial Order.<sup>5</sup> Paragraph 270 and Schedule XXXIV of Borden Pre-Trial Order.

[fol. 1096]

TABLE 9  
Borden Indirect Labor Costs Allocation to Store Office Personnel

| Store<br>Discount<br>Classes | Branch<br>Personnel <sup>1</sup> | Division Personnel Departments |                     |                         |                   | District<br>Personnel <sup>3</sup> | Total<br>Indirect<br>Labor<br>Costs |
|------------------------------|----------------------------------|--------------------------------|---------------------|-------------------------|-------------------|------------------------------------|-------------------------------------|
|                              |                                  | Billing <sup>2</sup>           | Credit <sup>3</sup> | Accounting <sup>4</sup> | Total<br>Division |                                    |                                     |
| Other .....                  | 499                              | 67                             | 50                  | —                       | 117               | —                                  | 616                                 |
| Independents:                |                                  |                                |                     |                         |                   |                                    |                                     |
| 0% .....                     | 391                              | 12                             | 3                   | 46                      | 61                | 13                                 | 465                                 |
| 2% .....                     | 571                              | 18                             | 4                   | 62                      | 84                | 18                                 | 673                                 |
| 3% .....                     | 276                              | 9                              | 2                   | 31                      | 42                | 9                                  | 327                                 |
| 4% .....                     | 80                               | 3                              | 1                   | 15                      | 19                | 5                                  | 104                                 |
| Total .....                  | 1,318                            | 42                             | 10                  | 154                     | 206               | 45                                 | 1,569                               |
| Chains (8.5%) .....          | 539                              | 356                            | 1                   | 8                       | 365               | 12                                 | 916                                 |
| Total .....                  | 2,356                            | 465                            | 61                  | 162                     | 688               | 57                                 | 3,101                               |

<sup>1</sup> Schedule XXXIII of Borden Pre-Trial Order.

<sup>2</sup> Paragraphs 245-249, incl. of the Borden Pre-Trial Order; Independent total prorated to discount classes on basis of number of store locations.

<sup>3</sup> Paragraphs 251-254, incl. of the Borden Pre-Trial Order; Independent total prorated to discount classes on basis of number of store locations.

<sup>4</sup> Paragraphs 255-258 of Borden Pre-Trial Order; Includes in Independent Stores total, costs of Whitney Statistical Services of \$141.00 per week, prorated to independent discount classes on a location basis.

<sup>5</sup> Paragraphs 259-261 of Borden Pre-Trial Order; Includes machine rental costs. Independent store total costs allocated to independent discount classes on a location basis.



He was retained as management consultant by the Women's Hospital, Detroit, Michigan; Toronto General Hospital, Toronto, Canada; and Presbyterian Hospital, New York City, New York (October 1928 through 1930);

*Legal Assistant* to Henry S. Dennison, president of the Dennison Manufacturing Company, Framingham, Massachusetts. His work with this company constituted a series of special assignments to study and report upon the adaptation of the company's organization and distribution policies to legal and economic changes growing out of the financial and business depression of the early 1930's. Among these assignments were, first, the coordination of the company's participation in some sixteen codes of fair competition under the National Recovery Administration; second, a comprehensive study of the company's distribution practices under the Robinson-Patman Act (March 1931 to August 1938);

He was associated with the law firm of Wise, Corlett and Canfield. From the inception of this work he assumed several substantial assignments in connection with antitrust matters (August 1938 to November 1939);

Washington associate of the firm of Wise, Corlett and Canfield. He was associated with this firm as a *consultant in accounting, economic and industrial organization problems* and as *practicing attorney* (November 1939 to December 1943);

Formed *law partnership* with Clarence K. Marion under style "Sawyer & Marion" with offices at 1624 Eye Street, N.W., Washington 6, D. C. (December 1948 to date).

[fol. 1109] "His present responsibilities are as he states:

From October 1, 1945 to September 30, 1957, I maintained an office at 56 Beaver Street, New York 4, New York and since that date have maintained an office at 84 Williams St., New York 38, New York, staffed with accountants and statisticians to aid me in my assignments in economic, statistical and accounting research



related to litigation in the anti-trust field. This phase of my work is carried on since 1951 as a partnership under the style *Albert E. Sawyer Company*, with Clarence K. Marion as partner.

The nature of my law practice has remained the same since my admission to the Bar of the District of Columbia in 1939. It is a specialized practice which has evolved logically from my experience in cost accounting and business management and industrial organization to which I applied my legal training. My practice concerns itself almost exclusively with laws and regulations affecting manufacturing businesses and these, in turn, with a few exceptions are federal statutes and regulations affecting inter-state commerce. I have been retained in administrative proceedings before the Federal Trade Commission, Fair Labor Standards Administrator, National Labor Relations Board, War Labor Board, U. S. Emergency Court of Appeals, Office of Price Administration, and as counsel to special committees serving the War Production Board, and the Office of Price Administration. I am retained from time to time in criminal and civil suits instituted by the Department of Justice under the Sherman Act and other anti-trust laws. I am retained from time to time in private litigation under such laws. I have represented both plaintiffs and defendants in these matters. My particular forte in connection with this type of practice lies in the combination of legal training and practical business and accounting experience which gives me added facility in the analysis of business problems arising under these laws and regulations, and the development and presentation of accounting and statistical information arising under such laws. In this type of work I am frequently retained by New York and Washington attorneys as special counsel and by government agencies. I am retained by several companies as special counsel, supplementing general counsel in problems arising from the above field of practice.

The various assignments in the anti-trust field have necessitated extensive studies in the following industries: flat glass, specialty glass, rubber, petroleum, rugs [fol. 1110] and carpets, banking and securities, cordage,

automobile parts, pianos, many different branches of the paper industry and industries using paper as their principal raw material, electrical manufacturing, food processing, chemical, rayon, sand & gravel and various miscellaneous manufacturing organizations.

My work has involved extensive studies in the field. I have organized and directed a large staff of accountants and statisticians to collect original data in the field which is later analyzed and presented for use in litigation. My field studies have included personal examination of many different types of sales solicitation effort, the methods of planning used in such work, comparative costs, maintenance of jobbers stocks, relative efficiency of different methods of warehousing manufactured goods for the most effective national distribution. Through this work I have become intimately acquainted with the manufacturer's problems of national distribution and the methods of analyzing such work.

My experience has also included a substantial effort in the analysis of manufacturing processes, particularly in studies designed to reveal cost savings due to different methods of manufacturing.

I have been called upon from time to time to study the effectiveness of organizations operated by academic and governmental bodies such as the University of Michigan Hospital, Women's Hospital, Detroit, Michigan; Toronto General Hospital, Toronto, Canada; Columbia University Hospital, New York, N.Y. (Legal Division of N. R. A.), (Research and Planning Division of N. R. A.).

Each year for the past twenty-five years I have been called upon for several addresses and lectures before business, accounting and legal groups such as Comptrollers Institute, National Association of Cost Accountants, New York State Bar Association, Trade and Commerce Bar Association, University of Michigan School of Business, Harvard Business School, Harvard Law School, George Washington University Law School, University of Michigan Law School, and the Trade and Industry Law Institute and the Practicing Law Institute of New York.

The more important assignments involving both legal and business analysis are:

[fol. 1111] **F.T.C. vs. Book Paper Association**—in charge of development of statistical defense of methods of distribution;

**F.T.C. vs. Standard Brands, Inc.**—special counsel upon appeal. Developed and presented extensive statistical and accounting proof of justification of quantity differential rates under Robinson-Patman Act;

**F.T.C. vs. Tag Manufacturers Institute**—in general charge of entire case and counsel for all respondents. Complaint and Order Dismissed upon Appeal;

General counsel for Gummed Industries Association (1939 to date);

General counsel for Waterproof Paper Manufacturers Association (1945 to date);

General counsel for Industrial Bag and Cover Association (1950 to date);

General counsel for Rubber Heel and Sole Institute (1944 to date);

General counsel for the Textile Bag Manufacturers Association (1949 to date);

Public service—member of the Attorney General's National Committee to study the antitrust laws; member of the Federal Trade Commission Advisory Committee on cost justification.

He has authored the following publications:

"The Control of Industrial Costs"

Year Book of National Association of Cost Accountants—1938

"Cost Accounting Opportunities under the Robinson-Patman Act"

Bulletin: National Association of Cost Accountants

Vol. XVIII, No. 12—February 15, 1937;

"Cost Accounting as Evidence in Cases Arising Under the Robinson-Patman Act"

Bulletin: National Association of Cost Accountants

Vol. XIX, No. 12—February 15, 1938;

"Accounting and Distribution Techniques as Voluntary Devices to Eliminate Abuses in Marketing"

The Accounting Review—June 1939;

[fol. 1112] "Round Table Discussion of the Robinson-Patman Act"  
 Year Book of National Association of Cost Accountants—1939;  
 "The Commission's Administration of Paragraph 2(a) of the Robinson-Patman Act: An Appraisal."  
 The George Washington Law Review—January-February 1940  
 A special symposium commemorating the 25th anniversary of the Federal Trade Commission;  
 "Robinson-Patman Act Symposium"  
 Commerce Clearing House, Inc., Publishers of Topical Law Reports—1948;  
 "Uniform Delivered Price, Under Recent Court Decisions, 1948"  
 Institute of Trade and Commerce Professions  
 Current Business Studies No. 1;  
 "Accounting and Statistical Proof in Price Discrimination Cases"  
 Iowa Law Review, Vol. 36, No. 2 Winter 1951;  
 McGraw-Hill Executive Course in Profitable Business Management  
 J. K. Lasser—Albert E. Sawyer.

He has membership in the following professional societies:

American Bar Association—Member Committee on F.T.C.  
 Bar Association of the District of Columbia;  
 Society of Business Advisory Professions, Inc. (President 1953)—Chairman of the Board 1954—Director 1949—to date;  
 National Industrial Conference Board;  
 American Economic Association;  
 American Marketing Association;  
 American Statistical Association;  
 The Business Historical Association, Cambridge, Mass.;  
 National Association of Cost Accountants.

16. Mr. Sawyer would further testify that representatives of plaintiff conferred with him during July through

[fol. 1113] September of 1957 and tendered for his review a copy of the plaintiff's pre-trial order—Bowman, the preliminary draft of defendant Bowman's pre-trial order, and the deposition of Mr. Albert J. Bergfeld. With regard to the principles underlying a properly conceived system of distribution cost accounting and allocation compatible with the requirements of the Robinson-Patman Act, he would testify substantially as follows that:

- (a) The costs that are eligible for consideration under the cost proviso of Section 2(a) of the Robinson-Patman Amendment to the Clayton Act are those which result from certain differences in the procedure of dealing with particular purchasers or classes of purchasers, to wit, those paying the higher of two prices and those paying the lower. The excuse or justification for the two prices rests in a difference either in *quantity* purchased or *method* of sale or delivery. Each of the differing methods or quantities must be assigned a cost—a *partial cost*—of the total operation of producing, selling, and delivering the products in question. The field of inquiry is further narrowed by requiring the differing methods to be related to particular customers or classes of customers receiving the differing treatment on the part of the seller.
- (b) So circumscribed and delimited, the application of this proviso deals with a highly synthetic concept which has little or no direct relationship to ordinary every day steps taken in recording the transactions which constitute the selling and delivering of products to customers. "Robinson-Patman Accounting" must, therefore, be distinguished from cost accounting in the ordinary course of business in that it is not a matter of record keeping on a day to day basis and provable as such, but consists essentially of numerous series of estimates, the validity of which rests, in large measure, upon the standard of care and good faith which brings them into being.
- (c) Where alternative methods of allocation are available, the considerations which dictated the ultimate choice should be stated as a part of the direct

presentation of the justification. If there is reliance upon historical precedence in the particular business or trade, the validity of the continued [fol. 1114] use of the precedent should be justified. Experience has dictated that so-called "normal and accepted accounting practices" used for management purposes, or other general every day purposes, are not necessarily applicable for the purposes dictated by the Robinson-Patman Act.

- (d) In segregating distribution costs for cost justification purposes, the functional approach is to be preferred although other approaches may be appropriate under some cost categories, costs are then subdivided into two groups. The first comprises these costs which are readily defined as directly applicable to a given functional segment. This involves no problem of allocation as between two or more segments.
- (e) The costs of functions which are not chargeable directly must be assigned by allocation. The process of allocation involves the measurement of the activity or output of the function in terms of appropriate units and then applying to each business segment the amount of the functional cost which is in proportion to its use of or responsibility for the units of functional service. The choice of the appropriate service unit which will adequately measure indirectly related functions to the costing segments is crucial to the validity of the results of a cost justification study. The two main considerations in making this choice is rationality and practicality of the selection.
- (f) There is no single set of accounting principles by which to reach a determination of what constitutes "due allowance" for differences in the cost of distribution to one type of buyer as against other types. The care and reasonableness of the methods of allocation are paramount considerations. Where a particular method of allocation tends toward a bias in favor of the discount to be justified there is a special obligation upon the pro-

ponent to establish the soundness of the selection of method.

- (g) The cost justification of the discounts or price differentials employed by Bowman in the sale of fluid milk involve a complex of joint cost relationships which requires an allocation of internal costs among various classes of products and classes of customers. The problems of proof center upon the question whether such presentations as have been developed in justification of these differentials, resting as they do in large measure upon [fol. 1115] the subjective qualities and judgments of the individuals who have executed or directed them, constitute acceptable evidence.
- (h) Bowman's route drivers perform dual functions, one of which is the physical movement of fluid milk products from platform to the customer. In the performance of this function, the route man is a truck driver and time devoted to the performance of this function should be allocated as an element of the transportation cost. The second function is the placement of the fluid milk products in the customer's place of business. This includes a variety of activities dependent upon the nature and location of the customer's business. In the performance of these activities, the route man provides a service for the customer, more or less depending upon the customer's requirements. Time devoted to these service activities should be accounted for as an element of customer service costs, and taken into account in the determination of the aforesaid transportation costs.
- (i) The allocation of the transportation costs to customers provides a choice of methods, the choice being dependent upon whether the tonnage or volume carried directly affects the elements of transportation cost, i.e., the cost of operating the vehicle and the time consumed in driving it on the route. If this is the case, then weight or bulk, whichever has the direct effect upon the cost, should become a factor in the allocation. Customers taking heavy weight or large bulk should

bear proportionately heavier costs than those who take less.

- (j) The allocation of the drivers' costs for customer services performed is a matter of a time study reporting of the route man's time devoted to these activities on a customer basis. In grouping the results of such studies into customer or discount classes, the usual rules relating to proper averaging should be observed, i.e., of homogeneous classes.
- (k) Central overhead, or what is sometimes known as General Office Expense, includes broadly, billing, credits, and collection, general accounting and general administrative staff, and executives' time. Where the organization operates through numerous branches, each with important central overhead functions, these should be brought into this category of cost analysis. Many of the costs involved [fol. 1116] under this heading may readily be classified as of proportionate application to all discount classes and therefore outside of the scope of the justification study. Care should be taken to avoid a hasty determination of this condition. It is incumbent upon the proponent of a cost justification to ascertain if there are indirect costs among the general overhead accounts which tend to counter-act savings claimed at other levels of distribution. Do the larger customers who benefit from larger discounts impose greater accounting burdens upon the seller by requiring special distribution reports or particularly burdensome billing techniques? *It is particularly incumbent upon the proponent of one of these studies to ascertain in some reasonable fashion the added cost in top administrative personnel required to solicit and maintain the business of the larger customers who enjoy the larger discounts. This is seldom possible by ordinary appraisal methods. Time is seldom a relevant measure of such costs. Where the calibre (and the salary) of the executive responsible for the larger units of business is conditioned upon his ability to get and to hold these accounts, the cost in added salary and expense should be allocated to those accounts. The witness would state*



upon examination that, in his professional capacity as advisor in these matters to many large corporations, it is his practice to stress the importance of this aspect of the cost of getting big business and holding it, and to advise that a realistic study be made and a careful appraisal of the added cost be undertaken. *His experience indicates that this element of cost is not de minimis and that in his judgment a cost justification may well be considered incomplete without a showing that this effort has been seriously made.*

In Bowman's cost study, no attempt was made to allocate central office expenses as between chains and independent stores, although the defendant conceded that the getting and holding of chain store business was the function of top management. However, Bowman did charge their independent stores with a cost of solicitation, but did not make an equivalent charge to the chains. The witness considers the failure to make these allocations and the further failure to explain such omissions, other than to cite the fact that such allocations are difficult to make, constitutes a significant weakness in Bowman's cost study. *His professional experience has indicated such costs are not de minimis, and that a study is incomplete that does not [fol. 1117] make a reasonable allowance for such costs known to be applicable to the favored customer classification.*

- (l) As to driver's commissions, there would seem to be sufficient indication from the Union contract formula to warrant the conclusion these costs were directly related to volume purchased by each customer. It then follows that these costs should have been allocated to each customer on a volume basis unless this could be demonstrated to be unfair or inequitable.
- (m) In other respects, the witness is of the opinion that the Bowman study attempts to convert data developed for internal management control purposes into a cost justification defense and that the result is not a relevant measure of the cost differ-

ential between the several customer or discount classifications. At best, the result is a crude approximation which might be tolerated if thoroughly consistent within itself. The witness observes, however, that the data seems to indicate results which are inconsistent.

17. Plaintiff and defendant Bowman have agreed that the deposition of Albert E. Sawyer taken on April 16 and 17, 1958 is herewith incorporated as a part of the record of this case.

18. Otto F. Taylor of the firm of Bacon, Taylor & Beairsto, New York City, New York, if called to the stand as a rebuttal witness, would testify substantially that his qualifications are as follows:

Birthplace: Lawrence, Massachusetts  
 Date of Birth: February 16, 1889  
 Home Address: 86 Blackburn Road, Summit, New Jersey  
 Home Telephone: Crestview 7-2120

*Education:*

Academic—Dartmouth College, AB, 1910  
 Accountancy—Amos Tuck School of Business Administration, MCS, 1911.

*Certified Public Accountant Certificates:*

|             |      |
|-------------|------|
| New York    | 1919 |
| Connecticut | 1929 |
| New Jersey  | 1934 |

[fol. 1118] *Registered Municipal Accountant Certificate:*

|            |      |
|------------|------|
| New Jersey | 1935 |
|------------|------|

*Admissions to Practice:*

|                                  |      |
|----------------------------------|------|
| U. S. Treasury Department        | 1921 |
| U. S. Board of Tax Appeals       | 1924 |
| Securities & Exchange Commission | 1935 |

*Societies:*

|                                    |      |
|------------------------------------|------|
| Phi Beta Kappa                     | 1910 |
| American Institute of Accountants  | 1920 |
| New York State Society of C.P.A.'s | 1919 |
| New Jersey Society of C.P.A.'s     | 1934 |
| National Assn. of Cost Accountants | 1920 |
| American Management Association    | 1935 |

*War Service:*

First Lieutenant Air Service, 1917 to 1919

*Experience:*

Niles & Niles, C.P.A.'s—Staff, 1911 to 1917  
Haskins & Sells, C.P.A.'s,—Staff, 1919  
Thomason & Black, Accountants  
and Engineers—Staff, 1920-1923  
Otto F. Taylor, Principal, 1923 to 1927  
Webster, Blanchard & Taylor,  
Partner, June 1, 1927 to May 31, 1937  
O. F. Taylor & Co., Partner, June 1, 1937 to  
date

*Other:*

President, N. Y. Alumni Amos Tuck School of  
Business Administration  
Director, Summit Trust Co.  
Member, Federal Trade Commission Advisory  
Committee on Cost Justification

19. Mr. Taylor would testify further that in the months of July through September 1957, representatives of the plaintiff conferred with him and tendered for his review a copy of the plaintiff's pre-trial order—Bowman, the preliminary draft of Bowman's pre-trial order, and the deposition of Mr. Albert J. Bergfeld. With regard to the principles underlying a properly conceived system of distribution cost accounting and allocation compatible with the re- [fol. 1119] quirements of Section 2(a) of the Robinson-Patman Act, he would testify substantially as follows that:

- (a) Although the general principles of accounting applicable in any instance are the same, the techniques by which they are applied differ according to the purpose to be served. Cost accounting for management purposes, for example, may compare standards of performance with what actually occurs and explain the amount and sources of variation. On the other hand, cost justification under the Robinson-Patman Act is of an entirely different character. Such a study is for the purpose of comparing differences in prices of goods of like grade and quality sold to competing customers with relevant costs which result from differences in the method of sale, differences in the method of delivery, and differences in the quantity. Inasmuch as price means, in ordinary terms, the money charged per unit, cost from a Robinson-Patman study must also be in terms of cost per unit or the equivalent.
- (b) The basic technique which the accountant will follow is that of long division. First of all, he must find the dividends of his problems. These dividends will be the various categories of money spent by a seller during a period of time, including all of those categories with respect to which variations in cost may occur by reason of the differences in quantity or in method of sale or delivery. All other kinds of expenses may well be excluded because they have no bearing on a cost justification problem. The important thing for the accountant to have in mind in this analysis of money spent is that each of the categories must be homogeneous whether they be products, classes of trade, customers, or activities. The reason for this should be obvious when it is considered that cost accounting of necessity deals with averages; otherwise there would be no end of it; and averages to be useful must be averages of like items. The average weight of elephants and mice means nothing; neither does the average cost per minute of transporting goods and selling them. This analysis of expenditures is often referred to as "func-

tional analysis" of expenses which means dividing expenses into separate parts, each part representing the cost of a certain homogeneous activity.

The next step in this task of long division is to find the proper divisors to be applied to the dividends. These divisors should be those units which [fol. 1120] for each individual function most nearly reflect or cause the variations in the amount spent. For example: if the dividend is the money cost of typing invoices, and if the amount of that cost varies according to the number of lines typed, then invoice lines is a proper divisor in that case. If truck transportation costs vary by distance, then mileage is a proper divisor for that cost category.

When the accountant has broken down the expenses of a period by functional groups, and has related to each of those groups the best available unit of measure, he is prepared to complete his long division example and state his quotient or series of quotients consisting of unit costs. The applicable unit costs may then be grouped, the total of them found, the difference calculated, and compared with the price difference in question.

- (c) Calculation of the cost differences which result from different quantities or methods of sale between competing retail stores should include the cost of executive time and expense attributable to securing and maintaining customer accounts and the salaries and expense of billing, accounting, credit, statistical, and other office operations. If such costs may properly be allocated according to customer classes (for example, chain stores and others), and if one class (say chain stores), required a disproportionate amount of such services, then naturally the costs allocated to that class of customer would reflect that fact.
- (d) The route drivers perform two functions identified as: the service function in which the driver performs certain services at and in the store of the customer, and the transportation function which is necessarily involved in moving the goods from

TABLE 11

**Borden Wholesale Accounts: Rebuttal Allocation of Delivery Costs Among Store Discount Classes (June of 1954)  
Distribution of Cost of Driver Service and Transportation Time (Based on Sample Months of July and August 1955)**

**Cost of Driver Time from Platform To and On Route and Return**

| Store<br>Discount<br>Class           | Total<br>Driver<br>Costs <sup>1</sup> | Costs of Driver's Transportation Time <sup>1</sup> |                                |                                  |  |  |       | Total<br>Cost of<br>Driver<br>Service<br>Time <sup>1,10</sup> | Costs Excluding<br>Commissions <sup>11</sup> |                           |
|--------------------------------------|---------------------------------------|--|--------------------------------|----------------------------------|--|--|-------|---|--|---------------------------|
|                                      |                                       | Drive to<br>and from<br>Route <sup>2</sup>         | Drive on<br>Route <sup>3</sup> | Loading<br>Gasoline <sup>7</sup> | Park<br>Truck at<br>Plant <sup>8</sup> | Vehicle<br>Break-<br>down <sup>9</sup> | Total |   | Driver<br>Transport<br>Time                  | Driver<br>Service<br>Time |
|                                      | \$                                    | \$   | \$                             | \$                               | \$                                     | \$                                     | \$    | \$  | \$   | \$                        |
| Other Customers <sup>2</sup> .....   | 3,478                                 | 548  | 618                            | 15                               | 54                                     | 4                                      | 1,239 | 2,239   | 809  | 1,462                     |
| Independents:                        |                                       |  |                                |                                  |  |  |       |   |  |                           |
| 0%.....                              | 3,397                                 | 574  | 660                            | 17                               | 56                                     | 4                                      | 1,311 | 2,086   | 856  | 1,362                     |
| 2%.....                              | 7,047                                 | 839  | 1,109                          | 28                               | 82                                     | 6                                      | 2,064 | 4,983   | 1,348  | 3,254                     |
| 3%.....                              | 4,720                                 | 405  | 602                            | 15                               | 40                                     | 4                                      | 1,066 | 3,654   | 696  | 2,386                     |
| 4%.....                              | 2,230                                 | 117  | 219                            | 5                                | 12                                     | 1                                      | 354   | 1,876   | 231  | 1,225                     |
| Total.....                           | 17,394                                | 1,935  | 2,590                          | 65                               | 190                                    | 15                                     | 4,795 | 12,599  | 3,131  | 8,227                     |
| Chain Stores (8.5%) <sup>3</sup> ... | 8,370                                 | 372  | 744                            | 19                               | 36                                     | 4                                      | 1,175 | 7,195   | 767  | 4,698                     |
| Total All Customers....              | 29,242                                | 2,855  | 3,952                          | 99                               | 280                                    | 23                                     | 7,209 | 22,033  | 4,707  | 14,387                    |

<sup>1</sup> Average Weekly Cost of Drivers' Salaries and Wages (incl. Commissions) spent on all wholesale routes during July and August, 1955.

<sup>2</sup> Non-store accounts: industrial, shops, drug stores, restaurants, bakeries, etc., served from these wholesale routes. Not subject to discounts.

<sup>3</sup> Chains are A & P and Jewel.

<sup>4</sup> Average weekly Direct Labor Costs including Commissions (\$10,148) of Regular Drivers from Table 10 (Col. 2).

<sup>5</sup> Average weekly Driver Salaries and Wages (including prorated Commissions) Item #25, Par. 184, and Schedules XXVI, XXVIII, and XXIX of Borden Pre-trial Order.

<sup>6</sup> Average weekly Driver Salaries and Wages (including prorated Commissions) Item #26, Par. 184, and Schedules XXVI, XXVIII, and XXIX of Borden Pre-trial Order.

<sup>7</sup> Average weekly Driver Salaries and Wages (including prorated Commissions) Item #31, Par. 184, and Schedules XXVI, XXVIII, and XXIX of Borden Pre-trial Order.

<sup>8</sup> Average weekly Driver Salaries and Wages (including prorated Commissions) Item #32, Par. 184, and Schedules XXVI, XXVIII, and XXIX of Borden Pre-trial Order.

<sup>9</sup> Average weekly Driver Salaries and Wages (including prorated Commissions) Item #36, Par. 184, and Schedules XXVI, XXVIII, and XXIX of Borden Pre-trial Order.

<sup>10</sup> Total Driver Costs (Col. 1) minus Total Cost of Driver Transportation Time.

<sup>11</sup> Exclusion based on ratio of Commissions to Total Driver Costs (Col. 1)  $(10,148 \div 34,703.50)$

(29,242 )

[fol. 1100] IN UNITED STATES DISTRICT COURT, NORTHERN  
DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 51 C 947

[Title omitted]

**PLAINTIFF'S REBUTTAL PRE-TRIAL ORDER AS TO BOWMAN  
DAIRY COMPANY—December 16, 1958**

The Court, pursuant to Rule 16 of the Federal Rules of Civil Procedure, having held pre-trial conferences from time to time, and the plaintiff and the defendant Bowman Dairy Company (hereinafter called "Bowman") having come to certain agreements in the course of said conferences,

It is Ordered:

1. This Order pertains only to the plaintiff and the defendant Bowman.

2. The introduction of evidence under any and all of said agreements is made without agreement as to the weight of such matters and subject to the objection reserved by the plaintiff and the defendant Bowman that the evidence sought to be introduced is immaterial or irrelevant, and the same reservation and objection shall apply to all [fol. 1101] stipulations, agreements, and admissions of fact contained in this order.

3. Plaintiff does not concede herewith that all or any part of the cost differentials as derived by Bowman fall within the scope of Section 2A of the Clayton Act.

4. This rebuttal pre-trial order and all matters herein referred to and all admissions of fact and agreements with respect to the further trial of this action shall be used for no other purpose than the trial of this action and are made solely for the purposes of this trial.

5. The testimony of Herbert F. Taggart, Otto F. Taylor, Albert E. Sawyer, and Elliott B. Woolley, as set forth in this order, is subject to correction, explanation, or amplification by reference, on behalf of either party, to the depositions of these four individuals which are filed in this case and constitute a part of this record.

6. Either party in briefs and arguments may refer to and quote material appearing in any article or publication written or edited by Messrs. Taggart, Taylor, and Sawyer, which are referred to in their respective depositions without the necessity of identifying or introducing said material into the record of this case.

[fol. 1102] Agreements as to Facts and Exhibits Pertaining to:

# I. Wholesale Stores (Chain vs. Independents)

## A. Customer Competition<sup>1</sup>

7. In answer to paragraphs 1 through 14, inclusive, of the Bowman defensive pre-trial order, the plaintiff submits selected material from the *Local Community Fact Book for Chicago, 1950*, as submitted by Bowman, where on page 238 it says:

Archer Avenue still is the leading business street, with fewer shops and more vacant frontage west of Kedzie Avenue. In 1948 there was only one community center, at Archer and Sacramento Avenues, which ranked 53rd among the 60 leading retail shopping centers in Chicago. *Residents also have access to the center at 47th and Ashland Avenue in New City and that at Halsted and 35th Streets in Bridgeport.* [Emphasis supplied]

This refers to Community Area No. 58, otherwise known as Brighton Park. The Brighton Park Community Area No. 58 contains the Gus Psomakos Spotlight Store identified in Schedule II of the plaintiff's supplemental pre-trial order. Goldblatt's in Schedule II is located in the business center at 47th and Ashland Avenue, referred to in the aforestated quotation.

8. With reference to Schedule II of the plaintiff's supplemental pre-trial order, the A & P Store is located in the Gage Park Community Area No. 63 regarding which the *Local Community Fact Book* at page 258 states:

<sup>1</sup> The exhibits and tables referred to in this section are in the accompanying *Folder A*.



[fol. 1103] Most residents did their shopping at the two centers that were developing at the intersections of 63rd Street and Western Avenue and 63rd Street and Kedzie Avenue in Chicago Lawn. The large shopping center at 63rd and Halsted Streets in Englewood also drew patrons from Gage Park.

A minor shopping center has developed at 59th Street and Western Avenue and a larger center at Garfield Boulevard and California Avenue. *Gage Park residents still do some of their shopping at the centers in Chicago Lawn and Englewood mentioned above, as well as at the new business development, Evergreen Plaza, at 95th Street and Western Avenue.* [Emphasis supplied]

9. In answer to paragraphs 19 through 26, inclusive, of the Bowman Defensive Pre-Trial Order, on about January 17, 1956, the plaintiff mailed a questionnaire to the customers who had been interviewed by Elrick & Lavidge, Inc., of the Bowman store customers referred to in Schedules I and II of the plaintiff's supplemental pre trial order. Bowman, said stores to be hereinafter referred to as "sample stores."

10. Copies of these mail questionnaires are identified as Rebuttal Exhibits G (1 & 2) and H (1 & 2), are in the accompanying Folder A, and are made a part hereof. There was only one mailing of these questionnaires to the 1,378 customers of the "sample stores," which customers were taken from the survey conducted by Elrick, Lavidge & Company for the defendant Bowman. The names and addresses of these customers, as thus furnished by Bowman, were prepared as the Master List referred to as Plaintiff Bulk Exhibit 1—Bowman, which is not included with the accompanying exhibits but is available for inspection and made a part hereof.

[fol. 1104] 11. The results of this mail questionnaire are summarized in *Tables 1-7*, inclusive, which are in the accompanying Folder A and made a part hereof. The results show for each of the sample stores indicated thereon: the degree of response to the questionnaire (*Table 1*), the degree of home delivery existing among the customers of the "sample stores" (*Table 2*), the degree to which these customers purchase their milk requirements from various

pairs of Bowman chain and independent stores, and the extent to which these customers buy their milk requirements solely from at least one pair of the Bowman chain and independent "sample stores" (*Tables 3-7*).

### B. Bowman Cost Defense<sup>2</sup>

12. Professor Herbert F. Taggart, if called to the stand as a rebuttal witness, would testify as follows:

I am a professor of accounting and formerly Assistant Dean, School of Business Administration, University of Michigan, Ann Arbor Michigan, and have held other teaching positions at Kansas University and the University of California. I am a graduate of the University of Michigan with a Ph. D. degree in Economics. I am a certified public accountant, State of Michigan, and since 1929 have engaged in the private consulting practice of accounting, especially in connection with pricing problems.

I have held the following positions: Chief, Cost Accounting Unit, Research and Planning Division, National Recovery Administration, Washington, D. C., 1933-1935; Consultant on Distribution Costs, Department of Commerce, 1938-1939; Director of Accounting and Assistant Administrator, Office of Price Administration, 1940-1943; Chief, Contract Termination Section, Audit Division, Office of the Fiscal Director, Army of the United States, 1943-1946; Consultant on accounting problems to ECA, Air Force, and other government departments; Chairman, Advisory Committee on Cost Justification under the Robinson-Patman Act, Federal Trade Commission, 1953-1956.

I am currently a member of the following professional organizations: American Institute of Certified Public Accountants; Michigan Association of Certified Public Accountants; National Association of Cost Accountants (President, Washington Chapter, 1945; National Director 1947-1948); American Accounting Association (President, 1942); and Controllers Institute of America (associate member).

<sup>2</sup> Exhibits and tables referred to in this section are in the accompanying *Folder B*.

I have written the following books and articles: *Minimum Prices Under the N.R.A.*; *The Cost Principle in Minimum Price Regulation*; *Distribution Cost Accounting for Wholesaling*; Sections on distribution costs in the second and third editions of the *Accountants' Handbook*; and many articles in professional journals, including especially "The Standard Brands Case," in the *N.A.C.A. Bulletin* for October 15, 1939.

13. Professor Taggart would further testify that representatives of plaintiff conferred with him in June and July of 1957 and tendered for his review a copy of the plaintiff's pre-trial order—Bowman, the preliminary draft of defendant Bowman's pre-trial order, and the deposition of Mr. Albert J. Bergfeld. With regard to the principles underlying a properly conceived system of distribution cost accounting and allocation compatible with the requirements of the Robinson-Patman Act, he would testify substantially as follows that:

(a) The field of distribution involves a multiplicity of functional activities, each of which is inherently different with respect to purpose and the economic conditions applicable thereto. Each of these functional activities with its attending economic conditions peculiar to it will engender different cost elements.

[fol. 1106] (b) Because of the foregoing inherent characteristics of the distribution function, each cost element (or homogeneous grouping of same) should be identified and analyzed separately to ascertain the various economic conditions and factors which create such cost and then be allocated to its sources (functions, products, and customers) in relation to its respective factor or combination of factors creating it. This general principle is in harmony with the requirements of the Robinson-Patman Act accounting objectives.

(c) Central Office Expenses, omitted by defendant Bowman, consisting of the time of the executives and their office staff spent in obtaining and maintaining customer accounts, including clerical time for billing, accounting, and additional statistical

services, should be determined and allocated to the respective store customers in proportion to the use of this time among them.

(d) The route drivers perform two functions identified as:

(1) The service function in which the driver performs certain services at and in the store of the wholesale customers, other activities relating to determining the store's needs for the day, and to doing the necessary route bookkeeping, and loading and unloading at platform; and

(2) The transportation function which is necessarily involved in moving the goods from the platform to the wholesale customers on the route. A portion of driver's time is necessarily involved in this function.

(e) In view of the nature of his service function as thus defined in (d), the driver's salaries and wages (including personnel benefits and vacation costs) should be prorated to the driver's service function and his transportation function on the basis of an appropriate time study, which includes the time from the platform to, at, and in each store and return to the platform, the time spent on route bookkeeping, the time spent determining the day's requirements, and the time spent on daily reports.

[fol. 1107] (f) The driver service costs then should be allocated among the store customers on the basis of the time study of his activities performed only at and in the stores of the customers on the routes, including time spent preparing and checking orders, loading and unloading at platform, and other route bookkeeping tasks.

(g) Transportation costs must include not only the cost of operating the vehicle involved, but also the driver's wages apportioned to the transportation function as defined in paragraph (d) above. Such total transportation costs will most logically be allocated to the stores on the basis of their respective volumes delivered. With respect to transpor-

tation costs, customers on delivery routes are responsible for truck operating expense in proportion to their physical volumes purchased.

- (h) If drivers do exercise some influence on volume delivered, then commissions paid to them should be allocated to the store customers on the basis of volume of product delivered to each. Under this procedure, commissions would be essentially a direct charge exactly determinable for each customer on every route. To justify allocating commissions on any other basis would require a definite showing that such direct charge produces inequitable or illogical results. If an expense is such that it would be eliminated if the customers were dropped, it is hard to say that it is not a specific cost to that customer.

14. Plaintiff and defendant Bowman have agreed that the deposition of Professor Taggart taken on April 14 and 15, 1958, is herewith incorporated as a part of the record of this case.

15. Albert E. Sawyer of Albert E. Sawyer Company in New York City, if called to the stand as a rebuttal witness, would testify that he has the educational and professional background substantially as follows:

He received a Bachelor of Law, June 1929, University of Michigan Law School and engaged in pre-law studies at the College of Literature, Science and the Arts, University of Michigan, completed June 1924.

[fol. 1108] His professional experience consists of:

Factory accountant for the Dort Motor Car Company, Flint, Michigan (1918 through 1923);

Employed on a part-time basis as an accountant on the administrative staff of the University of Michigan (September 1923 to November 1927);

At the special request of Dr. Clarence C. Little, then president of the University of Michigan, he accepted the assignment on a full time basis to re-organize all *business and accounting procedures* incident to the administration of the University Hospital (November 1927 to October 1928);

[fol. 1097]

TABLE 10

Borden's Distribution Costs as Allocated Among Store Classes and Average Unit Distribution Costs,  
and Discounts Granted (June 1954)

| Store<br>Discount<br>Classes | No. Points<br>Delivered<br>Weekly <sup>1</sup> | Average Weekly Allocation Costs |                                  |                             |                                  |                                 |                           |        | Average<br>Unit<br>Costs |
|------------------------------|--|---------------------------------|----------------------------------|-----------------------------|----------------------------------|---------------------------------|---------------------------|--------|--------------------------|
|                              |  | Direct<br>Labor <sup>2</sup>    | Special<br>Delivery <sup>3</sup> | Transportation <sup>4</sup> | Office<br>Personnel <sup>5</sup> | Loss on<br>Returns <sup>6</sup> | Bad<br>Debts <sup>7</sup> | Total  |                          |
|                              | (1,000)  | \$                              | \$                               | \$                          | \$                               | \$                              | \$                        |        | (¢ per point)            |
| Other .....                  | 86.3   | 3,478                           | 57                               | 1,172                       | 616                              | 102                             | —                         | 5,425  | 6,286                    |
| Independents:                |  |                                 |                                  |                             |                                  |                                 |                           |        |                          |
| 0% .....                     | 30.8   | 3,397                           | 8                                | 1,237                       | 465                              | 110                             | 9                         | 5,226  | 16,968                   |
| 2% .....                     | 157.5  | 7,047                           | 23                               | 2,085                       | 673                              | 391                             | 14                        | 10,233 | 6,497                    |
| 3% .....                     | 171.3  | 4,720                           | 35                               | 1,139                       | 327                              | 304                             | 7                         | 6,532  | 3,813                    |
| 4% .....                     | 110.9  | 2,230                           | 47                               | 426                         | 104                              | 168                             | 2                         | 2,977  | 2,684                    |
| Total .....                  | 470.5  | 17,394                          | 113                              | 4,887                       | 1,569                            | 973                             | 32                        | 24,968 | 5,307                    |
| Chains (8.5%) .....          | 913.5  | 8,370                           | 174                              | 1,450                       | 916                              | 1,139                           | —                         | 12,049 | 1,319                    |
| Total All Stores .....       | 1,470.3  | 29,242                          | 344                              | 7,509                       | 3,101                            | 2,214                           | 32                        | 42,442 | 2,887                    |

<sup>1</sup> From paragraph 270, Schedule XXXIV of the Borden Pre-Trial Order.

<sup>2</sup> Schedules XXVI-XXIX of the Borden Pre-Trial Order. Includes the commissions paid (\$10,148) as in Schedule XXV. Consist of Drivers Wages, Salaries, Personnel Benefits, and Vacation Pay.

<sup>3</sup> Schedules XXX and XXXI and paragraphs 210-224 of the Borden Pre-Trial Order.

<sup>4</sup> Schedules XXXII and paragraphs 225-230 of the Borden Pre-Trial Order. Includes freight on leased trucks.

<sup>5</sup> Table 9. Includes Borden Division and District main office and personnel costs.

<sup>6</sup> Paragraphs 264-266 of the Borden Pre-Trial Order.

<sup>7</sup> Paragraphs 262-263 of the Borden Pre-Trial Order.

Borden Wholesale Accounts;  
 Rebuttal Allocation of Average Weekly Delivery Costs Among Store Discount Classes (June 1954) by Cost Classes.  
 Total Number Points Delivered Weekly and Average Total Delivery Costs per Unit (Based on Sample Months of July and August 1955)

| Store<br>Discount<br>Class           | Number of Points<br>Delivered               |                               | Average Weekly Delivery Costs                    |   |                                      |                                |   |  |                                      | Average<br>Delivery<br>Cost<br>per<br>Unit |
|--------------------------------------|---|-------------------------------|--|---|--------------------------------------|--------------------------------|---|--|--------------------------------------|--|
|                                      | Total<br>Weekly <sup>1</sup><br><br>(1,000) | Avge.<br>per Day<br>per Store | Driver<br>Service<br>Cost <sup>2</sup><br><br>\$ | Driver<br>Com-<br>mission<br>Expense <sup>3</sup><br><br>\$ | Transportation<br>Costs <sup>4</sup> |                                | Special<br>Delivery<br>Costs <sup>5</sup><br><br>\$ | All Other<br>Allocated<br>Costs <sup>6</sup><br><br>\$ | Total<br>Delivery<br>Costs<br><br>\$ |  |
|                                      |   |                               |  |   | Driver <sup>4</sup><br><br>\$        | Vehicle <sup>4</sup><br><br>\$ |   |  |                                      |  |
| Other Customers <sup>4</sup> .....   | 86.3  | 38.5                          | 1,462  | 596   | 276                                  | 441                            | 57  | 718  | 3,550                                | 4.1136                                     |
| Independents:                        |   |                               |  |   |                                      |                                |   |  |                                      |  |
| 0%.....                              | 30.8  | 13.1                          | 1,362  | 213   | 99                                   | 157                            | 8   | 584  | 2,423                                | 7.8669                                     |
| 2%.....                              | 157.5                                       | 45.8                          | 3,254  | 1,087   | 504                                  | 805                            | 23  | 1,078  | 6,751                                | 4.2863                                     |
| 3%.....                              | 171.3                                       | 103.1                         | 2,386  | 1,182   | 548                                  | 875                            | 35  | 638  | 5,664                                | 3.3065                                     |
| 4%.....                              | 110.9                                       | 231.6                         | 1,225  | 765   | 355                                  | 566                            | 47  | 274  | 3,232                                | 2.9143                                     |
| Total.....                           | 470.5                                       | 59.3                          | 8,227  | 3,247   | 1,506                                | 2,403                          | 113   | 2,574  | 18,070                               | 3.8406                                     |
| Chain Stores (8.5%) <sup>9</sup> ... | 913.5                                       | 599.0                         | 4,698  | 6,305   | 2,925                                | 4,665                          | 174   | 2,055  | 20,822                               | 2.2794                                     |
| Total All Customers....              | 1,470.3                                     | 125.7                         | 14,387   | 10,148  | 4,707                                | 7,509                          | 344   | 5,347  | 42,442                               | 2.8866                                     |

<sup>1</sup> Source: Table 8.

<sup>2</sup> From Table 11 as allocated by Borden Time Study, but excluding Commission Expense.

<sup>3</sup> Allocated on basis of Number of Points Delivered.

<sup>4</sup> Source: Total Driver Transportation Costs as derived in Table 11 but excluding Commission Expense. Allocated on volume basis.

<sup>5</sup> Source: Total Vehicle Costs from Table 10. Excludes Freight Costs on Leased Trucks. Allocated on volume basis.

<sup>6</sup> From Table 10. Consists of Drivers Wages, Salaries, Personnel Benefits and Vacation Pay.

<sup>7</sup> Sum of Office Personnel, Loss on Returns, and Bad Debts as stated in Table 10.

<sup>8</sup> Non-store accounts; industrial shops, drug stores, restaurants, schools, etc., served on wholesale routes.

<sup>9</sup> A & P and Jewel chain units.



the platform to the customers on the route, and in which a portion of the driver's time is necessarily involved.

- (e) In view of the nature of his service function, as defined above, the driver's salaries and wages (including personnel benefits and vacation costs) should be prorated to driver's service function and his transportation function on the basis of an appropriate time study, which includes the time from the platform to and at each store and return to the platform as well as the time spent on miscellaneous activities such as route bookkeeping, checking orders and daily reports, and loading and unloading at platform.

[fol. 1121] (f) The driver service costs, as defined above, then should be allocated among the store customers on the basis of the time study of his activities performed at and in the stores of the customers on the routes, including time spent preparing and checking orders, loading and unloading at platform, and other route bookkeeping tasks.

- (g) Transportation costs must include not only the cost of operating the vehicle involved, but also the driver's wages apportioned to the transportation function as defined above. Such total transportation costs will be most logically allocated to the stores on the basis of their respective volumes delivered. With respect to transportation costs, customers on delivery routes are responsible for truck operating expenses in proportion to their physical volume purchased. A route delivery truck in this business may well be looked upon as a moving warehouse and that the cost of moving it with its load should be allocated very much like the cost of a central warehouse; say, at the pasteurizing plant. Since the total quantity of fluid milk is not allocated to any one store until after the truck reaches that store, all of the cost of getting it there becomes merged and spread over the whole load. Such aggregated transportation costs may, therefore, be divided into parts only on a volume basis. Having reached the store, the additional



costs incurred at that location, including the segregated portion of the driver's pay, may properly be assigned to that particular store. It makes no difference whether this store is a chain store unit or an independent store, because it is not owners which compete but particular stores. One owner may have a lot of stores or only one but in this business finance is irrelevant.

- (h) The allocation of joint costs involves the selection of units of measurement, or yardsticks as they are sometimes called. Frequently, the problem resolves itself into a choice between available units none of which is perfect. Good accounting practice dictates the selection of that basis which is most closely related to the activity or function, the cost of which is being allocated. In the case of commissions paid to milk route drivers based on volume of products delivered, the correct basis of apportioning the cost among customers is obviously the relative volume delivered to individual stores. It could probably be demonstrated that variations in any unit other than volume, such for example, [fol. 1122] as minutes at location, are less closely associated with variations in amount of commissions than are variations in volume delivered.

20. Plaintiff and defendant Bowman have agreed that the deposition of Otto F. Taylor taken on April 28, 1958 is herewith incorporated as a part of the record of this case.

21. Elliott B. Woolley, if called to the stand as a rebuttal witness, would testify as follows: He was graduated from Leland Stanford University, Palo Alto, California in 1937, with an AB degree in economics, statistics, and mathematics. From 1940 to 1942, he engaged in graduate studies in economics, statistics, mathematics, and accounting while a resident in Washington, D. C., at American University and Graduate School of the United States Department of Agriculture. He has written an article for publication in the *Econometrica*, entitled "Method of Minimized Areas for Correlation Analysis." He has since 1937 been employed by the Federal Government in various capacities as statistician and economic analyst until 1948, at which time he was employed by the Antitrust Division of the Department

of Justice as an economist and is at the present assigned to the Chicago field office.

22. Mr. Woolley would testify further that he has reviewed all of the material submitted by the defendant Bowman pertaining to their offer of defense relating to the existence of competition and cost defense of price differences among their wholesale customers, and the existence of competition and cost defense of price differences among [fol. 1123] their bulk wholesale customers. He has conducted on behalf of the plaintiff a rebuttal mail questionnaire of the wholesale customers of the aforesaid sample stores, and has analyzed the results as they relate to the question of competition which are presented in Section I-A of this rebuttal pre-trial order. He also has analyzed the defendant Bowman's cost study as presented, the results of which are submitted in answer thereto in the paragraphs to follow. With respect to the principles underlying a properly conceived system of distribution cost accounting and allocation compatible with the requirements of the Robinson-Patman Act, he would testify as follows: that he agrees in substance with the controlling principles of cost accounting, their application to, and criticism of the Bowman cost defenses as stated by the foregoing three expert testimonies.

In addition, he would state that in his opinion total transportation cost is incurred by virtue of the prior existence of the customer demand that the fluid milk product be brought to them, rather than having each customer go to the platform himself. Hence each is proportionately responsible for the creation of this cost to Bowman; obviously if none demanded such door delivery, this transportation cost would not exist. Each truck has a volume capacity in which all the amounts of fluid milk to be delivered on that day's trip is carried. Each store customer participates in this total volume proportionately to the amount delivered that day. Since each store's volume occupies a proportionate amount of cubic space in the truck, the total transportation [fol. 1124] costs thereof should be equally applicable to each unit of volume of space so occupied. Hence, the only rational basis of allocation of this cost to the respective customers is in proportion to the volume of fluid milk products delivered to each. Each unit of volume will be charged the same rate of this total transportation cost.

and will be most equitably allocated thereby to the store customers.

With regard to the proper allocation of commissions paid to drivers, he would state that the calculation of driver's commission, in conformity with the provisions of the "Milk Driver's Union Contract" (Exhibit X of their order), is based on the total physical volume of fluid milk products delivered to the independent and general store customers on the route; and that each such store contributes its share of volume to that total. The commission is based on a progressive rate scale, as evidenced in the Union Contract formula, and hence, in order to enhance his commission receipts, provides the incentive for the driver to endeavor to maximize his volume delivered—limited only to customer demand experience and the opposing health requirement that fluid milk must be returned to the supplier for other non-fluid milk uses if not sold within three days. Since drivers may exercise some influence on volume delivered, then commissions paid them should be allocated to the store customers on the basis of volume of product delivered to each. Commissions are essentially by nature a direct charge exactly determinable for each customer on [fol. 1125] every route, because the elimination of, or variation in the volume of any one customer, will of necessity affect the amount of commissions paid to the driver.

23. Plaintiff and defendant Bowman have agreed that the deposition of Elliott B. Woolley taken on June 23, 1958 is herewith incorporated as a part of the record of this case.

24. In answer to paragraphs 27 and 32 and Exhibits 4, 14, 15, and 16 of defendant Bowman's defensive pre-trial order, plaintiff submits Rebuttal Exhibit J in the accompanying Folder B, which graphically portrays the nature of the route driver's functions involved in Bowman's distribution system, and the various cost centers which should be allocated separately in accordance with the foregoing applicable cost accounting principles consistent with the requirements of Section 2(a) of the Robinson-Patman Act. This exhibit shows for each cost center the economic factor or basis by which it should be allocated to the size classes of Bowman's store customers in harmony with said cost accounting principles.

25. In answer to paragraphs 27 and 32 and Exhibits 4, 14, 15 and 16 of Bowman's defensive pre-trial order, plain-

tiff offers Rebuttal Exhibits K-1 through K-3, consisting of transmittal letter from Bowman to plaintiff dated July 25, 1957, enclosing the requested additional statistics relating to the three wholesale store divisions (Elston, Forest, and South) for each of the months of March and December 1955. These additional statistics consist of: (a) the total points delivered; (b) the total number of glass containers delivered; (c) the total number of case equivalents delivered; [fol. 1126] (d) the total number of customers served; (e) the total route days; (f) the total number of routes; and (g) the totals of each of the itemized sales, delivery, and collection expenses of these three distribution divisions combined.

26. Plaintiff also submits *Tables 8-A through 8-G*, which consist of plaintiff's calculation of Bowman Miscellaneous Divisional Expense cost rate per customer per day (*Table 8-A*); the Bowman Divisions' Office Personnel cost per day (*Table 8-B*); the Bowman Bottle Expenses per glass container delivered (*Table 8-C*); Bowman Milk Room Wages (including pro rata vacation and benefits) per case delivered (*Table 8-D*); Bowman Route Drivers Commissions per point delivered (*Table 8-E*); Bowman Route Drivers Service Wages (including pro rata vacation and benefits) per minute of service time spent at and in the stores on the routes (*Table 8-F*); and Bowman's Route Transportation Costs per point delivered, composed of vehicle expenses, truck drivers' wages (including pro rata vacation and benefits), and route driver transportation time cost (including pro rata vacation and benefits) (*Table 8-G*). These statistics relate respectively to the months of March and December 1955 for use in the plaintiff's rebuttal re-allocation of Bowman's direct and indirect distribution expenses. The data for the month of December 1955 were selected initially by Bowman for use with their January 1956 discount schedules.

27. Plaintiff offers the further rebuttal evidence contained in *Table 9*. On request of plaintiff, Bowman furnished the following additional statistics from their 1949 time study of Elston Division routes: (a) the total paid time spent by each route driver in his working day; (b) the total amount of service time spent by each route driver at and in the customer's establishment performing the time study work elements (other than those

included in his transportation function) plus his route-bookkeeping time, loading and unloading of fluid milk products at the plant, checking the load, preparing the day's reports, and the performance of other driver office time; and (c) the amount of driver transportation time spent by the driver during the day operating the vehicle, parking it, getting it from the garages and regaraging it at the end of the day, and any time spent during the day waiting for repair of the vehicle. The basic data for this *Table 9* were furnished for each store on each route, and, while not included in the rebuttal evidence submitted herewith, are available as Rebuttal Bulk Exhibit No. 2—Bowman and made a part hereof. These foregoing exhibits and *Tables 8 and 9*, respectively, are located in the accompanying Folder B and are made a part hereof.

28. In answer to Appendix A of Exhibit 4 of Bowman's defensive pre-trial order, Mr. Woolley would testify that *Tables 10 (A & B) and 11, and Charts I (A & B) and II*, consist of rebuttal data with regard to Bowman's Customer Services performed at the independent stores and sampled on the 33 Elston Division routes to demonstrate the more correct relationship of the amount of route driver's performance time to the size of stores served on the routes [fol. 1128] (*Table 10 and Charts I and II*). He would also testify that the proportion of stores receiving said customer services on all sample days, one sample day, or none of the sample days are shown in *Table 11*. In addition that these data are from the Bowman 1949 time study work sheets on each store in the 33 Elston Division sample routes, all furnished by Bowman upon request and identified collectively as Rebuttal Bulk Exhibit No. 3—Bowman. This rebuttal bulk exhibit is not included herewith but is available upon request and made a part hereof. The *Tables 10 and 11 and Charts I and II* are located in the accompanying Folder B and made a part hereof.

29. In answer generally to paragraph 27 and 33 and Exhibits 4, 14, 15, and 16 of Bowman's defensive pre-trial order, and specifically to representations to plaintiff by R. G. Havemeyer of Stevenson, Jordan & Harrison, Inc. on behalf of defendant Bowman, regarding the modification of their cost determining formula, introduced for the first time in September 1955, to reflect the differential proportion of fiber and glass containers between chain and

independent stores, plaintiff offers *Rebuttal Exhibits L-1 through L-3, Tables 12 (A & B), 13 (A & B), and 14, and Charts III (A & B) and IV (A & B)*, consisting of letters of transmittal and summaries of additional data requested of Bowman by the plaintiff, derived from the required 1% route-sample of the three Divisions (Elston, South, and Forest) with respect to: (a) the total number of points delivered in fibre and glass containers, and the total number of points delivered in only glass containers separately for [fol. 1129] each size of independent store and chain store in the sample; (b) the total number of fibre and glass containers delivered daily, and the total number of glass containers delivered daily for each size of independent and chain store in the sample; and (c) the average size of independent and chain store in the sample. Mr. Woolley would testify that *Charts III (A & B)* show the highly significant relationship of the number of fibre and glass containers delivered daily per customer to the number of points delivered daily per customer for chain and independent stores respectively. *Charts IV (A & B)* show the relationship of the percentage of glass containers in total containers delivered daily per customer to size of independent and chain store respectively. The basic sample data, from which these tables and exhibits were prepared, were initially processed by the FBI. They are collectively known as Rebuttal Bulk Exhibit 4—Bowman, which is available on request and herewith made a part hereof. This 1% sample of wholesale routes was drawn by Bowman according to the following procedure for each Wholesale Division (Elston, Forest, and South) as requested by plaintiff: (a) each of the three Divisions' route total of points delivered during September 1955 was ascertained; (b) each route of the Division then was ranked according to its size or volume; and (c) each smallest and largest route in the Division was selected together with every third one of the remaining routes. The resulting 55 routes from all three Divisions yielded the sampling of independent and chain stores as requested by plaintiff. *Exhibits L-1 through L-3; Tables [fol. 1130] 12, 13, and 14; and Charts I through IV*, are included in the accompanying Folder B and are made a part hereof.

30. In answer to Exhibit 16 of Bowman's defensive pre-



trial order, plaintiff offers *Table 15*, consisting of a summary of the estimated number of cases and estimated number of glass containers delivered per store per day as determined from their respective relationships to size of store based upon the material in *Tables 12 through 14* and *Charts I through IV*, by size of independent and chain store. In addition, *Table 15* is offered to show: (a) the extension of driver service time by size of store for each stated group of elements in the driver's service function performed for the independent and chain stores, as calculated according to their respectively indicated time-rate formula; and (b) the translation of the resulting total service time for the independents and for the chains into driver service unit-cost for each size of store for the months of March and December 1955. *Table 15* is in the accompanying Folder B, and is made a part hereof.

31. Plaintiff offers further rebuttal evidence in *Table 16 (A & B)*. *Table 16-A* identifies the costs of the relevant cost elements for each size of store as calculated from the preceding tables for the independent and chain stores separately, their combined total costs for said classes of store, and their respectively computed average daily unit total cost, for the month of March 1955. *Table 16-B* contains the same data for the month of December 1955. Both tables are in the accompanying Folder B and made a part hereof.

[fol. 1131] 32. In answer to paragraph 27 and Exhibits 14 and 16 of Bowman's Defensive Pre-Trial Order, plaintiff offers *Table 17 (A & B)* relating respectively to the months of March and December 1955, each of which compares the rebuttal unit delivery cost differences, Bowman's unit cost differences, and the chain and independent discount differences for each size of store. In *Table 17-B* the comparisons relate to January 1956 discount differences and December 1955 unit cost differences. These tables are in the accompanying Folder B and made a part hereof.

33. Plaintiff further offers Rebuttal Exhibit X consisting of a copy of the *Milk Drivers' Union Articles of Agreement*, which is located in Folder B. This contract sets forth the formula used by Bowman to calculate the commissions to be paid each route driver for the volume of fluid milk products delivered on the route during the stated applicable

period. Plaintiff and defendant Bowman have agreed that the formula used by Bowman to calculate said commissions is set forth in Article 42(A) of said contract.

## II

### Bowman's Downtown Restaurant Customers Chicago Loop

#### A. Restaurant Competition<sup>3</sup>

34. In answer to paragraph 75 of Bowman's Defensive Pre-Trial Order, plaintiff submits that if Duncan A. Welty [fol. 1132] were cross-examined, he would testify substantially as follows:

He has been in the restaurant business for many years and has always purchased his milk from the Bowman Dairy Company. When he purchased the restaurants in the Field Building, 130 S. Clark Street, Chicago, in August of 1953, he contacted his old friend, Walter Kettell, vice president of the Bowman Dairy Company, and made an agreement on the prices he was to pay for fluid milk products to be sold in these restaurants, the Welty's Field Building Restaurants. All contacts with the Bowman Dairy Company since that time have also been with Walter Kettell. Welty has never had any contacts at any time with Jack Means, manager of the Central Wholesale Division of the Bowman Dairy Company. Sometime during the summer and later in the fall of 1954, Mr. Welty received notice from Kettell that Bowman was increasing its prices. From time to time Mr. Welty has had calls made on him by solicitors for other dairies. The only name of any dairy calling on him, which he can remember, is the Beloit Dairy Company. Mr. Welty cannot remember the name of any solicitor for Beloit. It is his recollection that sometime during the summer and fall of 1954, a Beloit representative called on him to advise him that they would furnish him milk at the same price that he was paying Bowman. He believes that he communicated this information to Kettell but has no recollection of any negotiations over

<sup>3</sup> Exhibits referred to in this section are in the accompanying Folder C.



prices with Kettell. Bowman did not, except on Half and Half cream, raise its prices to Welty during the remainder of 1954.

35. In further answer to paragraph 75, if Simms T. McGuire, former president of the Beloit Dairy Co., were called as a witness he would testify that during the period of August 1953 through 1954 Beloit had two solicitors: Charles (Chick) Evans and A. C. Ehman. If Evans, now employed as a solicitor for Hawthorn-Melody Farms Dairy, Chicago, Illinois, and Ehman, retired and residing in LaGrange, Illinois, were called as witnesses they, as well as McGuire, would testify that they had no recollection of making any contact with Duncan A. Welty, proprietor of the Welty's Field Building Restaurant.

[fol. 1133] Defendant Bowman moves that the proffered testimony of Messrs. McGuire, Evans, and Ehman be stricken on the following grounds and for the following reasons:

- (1) Defendant has not had an opportunity to interview or cross-examine any of said proposed witnesses;
- (2) The proposed testimony of these witnesses is irrelevant on the issue of defendant's good faith.

For the foregoing reasons, defendant does not consent to this paragraph of this Order.

36. In answer to paragraph 76 of Bowman's Defensive Pre-Trial Order, plaintiff offers Rebuttal Exhibits "O" and "P" to refute defendant's claim in paragraph 76 that the prices of the La Salle Pharmacy were the result of meeting Beloit's prices at the La Salle Hotel and at the Hilton Hotel, and Borden's prices at the Palmer House. Rebuttal Exhibit "O" shows the dates and price changes made by Bowman, Beloit, and Borden relating to gallon dispenser milk distributed to the La Salle Hotel Pharmacy, the La Salle Hotel, and bulk gallon milk to the Hilton Hotel, and the Palmer House. Rebuttal Exhibit "P" shows the dates and prices changes made by Bowman, Beloit, and Borden for half pints of milk and cottage cheese for the year 1952 and half pints of buttermilk for the years 1953 and 1954 delivered to the La Salle Hotel Pharmacy, the La Salle Hotel, the Hilton Hotel, and the Palmer House.

This data was obtained by the FBI from these hotels. It is to be noted that the Borden prices quoted to the Palmer [fol. 1134] House are formulated from the basic milk prices paid to the farmer which were changed regularly on the first of each month during the year.

Plaintiff further submits, as a result of an FBI investigation, that if James Lake, manager of the La Salle Pharmacy, were cross-examined, he would testify that the La Salle Pharmacy commenced buying milk from the Bowman Dairy Company in April of 1952 as the result of his placing a telephone call to Frank Johns, an old personal friend of his, who was and is an employee of the Bowman Dairy Company. Mr. Lake would further testify that the price changes referred to in paragraph 76 were not the result of any negotiations between him and the Bowman Dairy Company.

37. In answer to paragraph 77 of Bowman's Defensive Pre-Trial Order, plaintiff offers Rebuttal Exhibit "Q" consisting of a tabulation of bulk gallon milk,  $\frac{1}{2}$  pint milk, and 18% cream prices and the dates changes were made by Bowman and Beloit Dairy at the Sheraton, Sheraton-Blackstone, and Edgewater Beach hotels during the year 1954. This evidence was tabulated from reports of investigations by the FBI.

#### B. Bowman's Cost Defenses <sup>4</sup>

38. In answer to paragraph 61 and Exhibit No. 42 of the Bowman Defensive Pre-Trial Order, plaintiff offers Rebuttal Exhibits M-1 and M-2 constituting, respectively, a letter of transmittal dated December 12, 1956 from R. G. [fol. 1135] Havemeyer, and the requested platform costs by type and size of container for each fluid milk product sold by the Central Wholesale Division to Bowman's restaurant customers in March and November 1955. The data on Exhibit M-2 are incorporated in the average unit costs used in *Tables 20 through 39*, inclusive, since these unit costs do vary according to size and type of containers and accordingly will contribute to the cost differences between those

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<sup>4</sup> Exhibits and tables referred to in this section are in the accompanying Folder C.

restaurants who do not buy the same fluid milk product in identically the same size and type of container.

39. Plaintiff offers further rebuttal evidence contained in Rebuttal Bulk Exhibit No. 5 which consists of the Bowman Summary Bills resulting from the normal course of business with each of the 34 restaurants in March 1955. These Summary Bills show the number of units delivered and the price charged the restaurant for each of the fluid milk products delivered during March 1955, and are the bases of the compilations of *Table 19*. This Rebuttal Bulk Exhibit No. 5 is not included in the accompanying Folder C, but is made a part hereof and is available upon request.

40. Plaintiff further offers *Tables 18 (A & B)* and contends they constitute summaries of the degree of non-cost justified price differences for fluid milk products sold in March 1955, based on the detailed analysis of *Tables 19 to 30*, inclusive. Plaintiff contends that *Table 18-A* shows for each of the fifteen fluid milk products the degree of non-cost justified price differences of all the Bowman downtown [fol. 1136] Chicago restaurant customers combined. Plaintiff contends that *Table 18-B* shows for each of the Bowman downtown Chicago restaurant customers the degree of non-cost justified price differences for each of the indicated sizes of fluid milk containers, which range from 52.4% to as high as 98.3% for all products.

41. Plaintiff further offers *Table 19* which summarizes for each of the 34 indicated Bowman restaurant customers in downtown Chicago the various statistics necessary to determine, from data supplied by Bowman, the total and average delivery costs per gallon of fluid milk products delivered in March 1955. To derive this required average per gallon delivery cost, the following procedure was used:

- (a) From Schedule III of plaintiff's Supplemental Pre-Trial Order of November 4, 1955 as to Bowman was itemized the total dollar value, based on sales prices, of *all products* sold by Bowman to each restaurant in March 1955. From Bowman's Summary Bills for each restaurant for the month of March 1955 (Rebuttal Bulk Exhibit No. 5) was tabulated the total value of purchases of non-fluid milk products by the respective restaurants. Then

the percentage of *fluid milk* products purchased was calculated from these data.

- [fol. 1137] (b) From Bowman's Summary Bills for the month of March 1955 (Rebuttal Bulk Exhibit No. 5) was tabulated for each restaurant the total gallon equivalents of all fluid milk products purchased.
- (c) From Schedule IV-A, page 2, of Bowman's Restaurant Cost Study of March 1955 (Exhibit 42 of Bowman's Defensive Pre-Trial Order), was tabulated the total delivery costs for *all products* purchased by each indicated restaurant customer. From these total delivery costs for *all products* was estimated the total delivery costs for *fluid milk products only* for each restaurant based upon its proportion of the total value of fluid milk products to the total value of all purchased products.
- (d) The resulting estimate of total delivery cost of fluid milk products for each restaurant customer was then divided by the total number of gallon equivalents of all fluid milk purchased in the month of March to obtain the desired average delivery cost per gallon of fluid milk. The average delivery cost per quart, pint, and half pint, respectively, was derived from the delivery cost per gallon on the basis of the number of each of these smaller containers in a gallon. These average delivery unit costs are used, together with the indicated platform costs to *Exhibit M-2*, to obtain the required total [fol. 1138] unit distribution cost to each restaurant for each of the fifteen fluid milk products shown on *Tables 20 through 30*.
- (e) The foregoing method of determining average unit delivery costs is in lieu of a more correctly conceived cost analysis by products and type and size of container purchased which was not, but which plaintiff contends should have been, made by Bowman, the results of which, therefore, are not available to plaintiff. These unit delivery costs are based on Bowman's delivery costs as derived from their own theories of cost accounting and allocation to each restaurant customer. These theories

reflect the same concepts employed in Bowman's analysis and allocation of delivery costs to wholesale customers and, therefore, incorporate the same deficiencies in scope, principle of cost accounting, and methods of allocation as exist with respect to the wholesale customers. The plaintiff's use of Bowman's resulting allocation of delivery costs to restaurants, for these rebuttal purposes, in no sense implies acceptance of nor agreement with Bowman as to the validity of their underlying concepts and methods of allocation.

42. Plaintiff offers as further rebuttal evidence *Tables 20 through 30*, inclusive, each of which shows for the respective [fol. 1139] fluid milk product the prices Bowman charges each restaurant, the total unit distribution cost for the product for each restaurant customer, and the resulting price and unit cost differences indicated. It is to be noted that the indicated price and unit cost differences for each restaurant are those resulting from a comparison of each independently owned restaurant with each other independently owned restaurant in competition therewith. Individual restaurants under common ownership are not paired with each other in this analysis; but each of such chain restaurants is paired with each of the other chain units and individually owned restaurants. Exhibits M-1 and M-2 and *Tables 18 through 30* are included in the accompanying Folder C and made a part hereof.

Enter:

Campbell, United States District Judge.

Date: December 16, 1958.

[fol. 1140]

TABLE 1

Summary of Response to Bowman Dairy Sample Store Customer Mail Questionnaire by Store Groups and Distances Customers are from Store as of January 17, 1956

Questionnaires Available and Replies Received Classified by Distance Customers are from Sample Stores

| Sample Store    |   | Total<br>Number of<br>Question-<br>naires<br>Mailed to<br>Customers<br>as Sampled<br>in Oct.<br>and Nov.<br>1955 | Total<br>Number of<br>Question-<br>naires<br>Returned<br>by P.O. for<br>"No Such<br>Address or<br>Person" | Total Number                                  |                  |                |       |                |       |                |       |                |       | Percentage Response |                  |             |             |                |
|-----------------|---|--|---|---|------------------|----------------|-------|----------------|-------|----------------|-------|----------------|-------|---------------------|------------------|-------------|-------------|----------------|
|                 |   |  |   | All Areas                                     |                  | Within ¼ Mile  |       | ¼-½ Mile       |       | ½-¾ Mile       |       | Over ¾ Mile    |       | All<br>Areas        | Within<br>¼ Mile | ¼-½<br>Mile | ½-¾<br>Mile | Over<br>¾ Mile |
| Group<br>Number | Name and Address                                |  |   | Question-<br>naires<br>Available<br>for Reply | Replies          | Avail-<br>able | Reply | Avail-<br>able | Reply | Avail-<br>able | Reply | Avail-<br>able | Reply |                     |                  |             |             |                |
| I               | Psomakos Super Mart<br>2416 W. 47th St.         | 245  | 15  | 230   | 92 <sup>1</sup>  | 188            | 80    | 22             | 9     | 9              | 2     | 11             | 1     | 40.0                | 42.6             | 40.9        | 22.2        | 9.1            |
| II              | A & P Store<br>2601 W. 51st St.                 | 358  | 19  | 339   | 187              | 292            | 160   | 33             | 17    | 8              | 7     | 6              | 3     | 55.2                | 54.8             | 51.5        | 87.5        | 50.0           |
| III             | Goldblatt's Dept. Store<br>47th and So. Ashland | 271  | 20  | 251   | 101 <sup>2</sup> | 33             | 13    | 70             | 30    | 26             | 14    | 122            | 44    | 40.2                | 39.4             | 42.9        | 53.8        | 36.1           |
| IV              | Goldenstern's Market<br>427 W. 69th St.         | 172  | 11  | 161   | 67 <sup>3</sup>  | 151            | 63    | 6              | 4     | 3              | 0     | 1              | 0     | 41.6                | 41.7             | 66.7        | 0           | 0              |
| V               | A & P Store<br>6702 S. Wentworth Ave.           | 88   | 7   | 81  | 26 <sup>3</sup>  | 70             | 24    | 6              | 1     | 2              | 0     | 3              | 1     | 32.1                | 34.3             | 16.7        | 0           | 33.3           |
| VI              | Kroger Store<br>7260 S. Wentworth Ave.          | 244  | 14  | 230   | 112 <sup>3</sup> | 192            | 95    | 19             | 9     | 4              | 1     | 15             | 7     | 48.7                | 49.5             | 47.4        | 25.0        | 46.7           |
| All Groups      |   | 1378   | 86  | 1292  | 585              | 926            | 435   | 156            | 70    | 52             | 24    | 158            | 56    | 45.3                | 47.0             | 44.9        | 46.2        | 35.4           |

Source: Replies to mail questionnaires to customers of the above listed Bowman stores as sampled on October 27-29 and November 4, 5, 1955 by Elrick, Lavidge and Co. for Bowman Dairy Company.

<sup>1</sup> One questionnaire returned unanswered.<sup>2</sup> Five questionnaires returned unanswered.<sup>3</sup> Two questionnaires returned unanswered.

[fol. 1141]

Table 2

Summary of Replies to Question #1 in Questionnaire to Bowman Dairy Sample Store Customers as of January 1956 Replies With Milk Delivered at Home

| Group Number | Sample Store<br>Name and Address                  | Number                        |                   | Number                              |                   | Number                             |                   | Number                             |                   | Number                            |                   | Percent Delivered |                    |                    |                    |                   |
|--------------|---|-------------------------------|-------------------|-------------------------------------|-------------------|------------------------------------|-------------------|------------------------------------|-------------------|-----------------------------------|-------------------|-------------------|--------------------|--------------------|--------------------|-------------------|
|              |   | All Areas<br>Total<br>Replies | Home<br>Delivered | Within 1/4 Mile<br>Total<br>Replies | Home<br>Delivered | 1/4 - 1/2 Mile<br>Total<br>Replies | Home<br>Delivered | 1/2 - 3/4 Mile<br>Total<br>Replies | Home<br>Delivered | Over 3/4 Mile<br>Total<br>Replies | Home<br>Delivered | All<br>Areas      | Within<br>1/4 Mile | 1/4 - 1/2<br>Miles | 1/2 - 3/4<br>Miles | Over 3/4<br>Miles |
| I            | Psomakos Super Mart<br>2416 W. 47th Street        | 92                            | 25                | 80                                  | 21                | 9                                  | 2                 | 2                                  | 2                 | 1                                 | 0                 | 27 2              | 26 3               | 22 2               | 100 0              | 0                 |
| II           | A & P Store<br>2601 W. 51st Street                | 187                           | 64                | 160                                 | 53                | 17                                 | 6                 | 7                                  | 3                 | 3                                 | 2                 | 31 2              | 33 1               | 35 3               | 42 9               | 66 7              |
| III          | Goldblatt's Dept. Store<br>47th and South Ashland | 101                           | 24                | 13                                  | 3                 | 30                                 | 8                 | 14                                 | 1                 | 44                                | 12                | 23 8              | 23 1               | 26 7               | 7 1                | 27 3              |
| IV           | Goldenstern's Market<br>427 W. 69th Street        | 67                            | 22                | 63                                  | 21                | 4                                  | 1                 | 0                                  | 0                 | 0                                 | 0                 | 32 8              | 33 3               | 25 0               | 0                  | 0                 |
| V            | A & P Store<br>6702 S. Wentworth                  | 26                            | 4                 | 24                                  | 4                 | 1                                  | 0                 | 0                                  | 0                 | 1                                 | 0                 | 15 4              | 16 7               | 0                  | 0                  | 0                 |
| VI           | Kroger Store<br>7260 S. Wentworth                 | 112                           | 33                | 95                                  | 29                | 9                                  | 3                 | 1                                  | 0                 | 7                                 | 1                 | 29 5              | 30 5               | 33 3               | 0                  | 14 3              |
|              | All Groups  | 585                           | 172               | 435                                 | 131               | 70                                 | 20                | 24                                 | 6                 | 56                                | 15                | 29 4              | 30 1               | 28 6               | 25 0               | 26 8              |

Source: Replies to Mail Questionnaires to customers of above listed stores as sampled on October 27-29 and November 4-5, 1955 by Elrick, Lavidge & Co. for Bowman Dairy Co.



[fol. 1142]

Table 3

Summary of Replies to Bowman Sample Store Customer Questionnaires of January 1956  
 Total Number Buying Milk from at Least one Pair of Bowman Chain & Independent Stores  
 Total Number and Percentage Buying at a Pair of Bowman Chain and Independent  
 At Sample Store Only.

| Sample Store |                        |              | Home Delivery and No-Home Delivery Customers  |  |      |   |  |      |
|--------------|------------------------|--------------|---|--|------|---|--|------|
| Group No.    | Name                   | Areas        | Home Delivery   |  |      | No-Home Delivery  |  |      |
|              |                        |              | Total No. Buying from at least one pair Bowman Chain and Indep't. Stores <sup>1</sup> | Buying from at least one pair of Sample Stores |      | Total No. Buying from at least one pair Bowman Chain and Indep't. Stores <sup>1</sup> | Buying from at least one pair of Sample Stores |      |
|              |                        |              |   | No.  | %    |   | No.  | %    |
| Groups I—III |                        | All Areas    | 11  | 2  | 18.2 | 44  | 7  | 15.9 |
|              |                        | within ¼ Mi. | 7   | 1  | 14.3 | 40  | 6  | 15.0 |
| I            | <u>Psomakos</u>        | All Areas    | 4   | 1  | 25.0 | 16  | 5  | 31.3 |
|              | 2416 W. 47th St.       | within ¼ Mi. | 4   | 1  | 25.0 | 14  | 5  | 35.7 |
| II           | <u>A &amp; P Store</u> | All Areas    | 4   | 1  | 25.0 | 27  | 1  | 3.7  |
|              | 2601 W. 51st St.       | within ¼ Mi. | 3   | —  | 0    | 26  | 1  | 3.8  |
| III          | <u>Goldblatt's</u>     | All Areas    | 3   | —  | —    | 1   | 1  | —    |
|              | 47th & S. Ashland      | within ¼ Mi. | —   | —  | —    | —   | —  | —    |
|              |                        | ¼—½ Mi.      | 1   | —  | —    | —   | —  | —    |
|              |                        | Over ½ Mi.   | 2   | —  | —    | 1   | 1  | —    |

[TABLE 3—CONTINUED ON PAGE 450]

## Groups IV--VI

|    |                                   |                          |   |   |   |    |   |      |
|----|-----------------------------------|--------------------------|---|---|---|----|---|------|
|    |                                   | All Areas                | 3 | - | - | 21 | 6 | 28 6 |
|    |                                   | within $\frac{1}{4}$ Mi. | 3 | - | - | 21 | 6 | 28 6 |
| IV | Goldenstern's<br>427 W. 69th St.  | All Areas                | - | - | - | 13 | 4 | 30 8 |
|    |                                   | within $\frac{1}{4}$ Mi. | - | - | - | 13 | 4 | 30 8 |
| V  | A & P Stores<br>6702 S. Wentworth | All Areas                | - | - | - | 1  | 1 | -    |
|    |                                   | within $\frac{1}{4}$ Mi. | - | - | - | 1  | 1 | -    |
| VI | Kroger<br>7206 S. Wentworth       | All Areas                | 3 | - | - | 7  | 1 | 14 3 |
|    |                                   | within $\frac{1}{4}$ Mi. | 3 | - | - | 7  | 1 | 14 3 |

<sup>1</sup> Source: Table 7-A

[fol. 1143]

Table 4—Home Delivery

Summary of Replies to Bowman Sample Store Customer Questionnaires of January 1956; Total Number of Replies, % Response

Percentage of Customers Buying at 2 or more Different Stores

Percentage of Customers Buying at Pairs of Bowman Chain and Independent Stores<sup>1</sup>

| Sample Store |                   | Total No.<br>Replies <sup>2</sup> | Percentage Buying from at Least |   |
|--------------|-------------------|-----------------------------------|---------------------------------|---|
| Group No.    | Name              |                                   | 2 or More Stores <sup>3</sup>   | One Pair of Bowman Chain<br>& Independent Stores <sup>4</sup> |
| Groups I—III |                   | All Areas                         | 113                             | 14.3  |
|              |                   | within $\frac{1}{4}$ Mi.          | 77                              | 12.1  |
| I            | Psomakos          | All Areas                         | 25                              | 21.0  |
|              | 2416 W. 47th St.  | within $\frac{1}{4}$ Mi.          | 21                              | 23.5  |
| II           | A & P Store       | All Areas                         | 64                              | 9.1   |
|              | 2601 W. 51st St.  | within $\frac{1}{4}$ Mi.          | 53                              | 7.5   |
| III          | Goldblatt's       | All Areas                         | 24                              | 21.4  |
|              | 47th & S. Ashland | within $\frac{1}{4}$ Mi.          | 3                               | —   |
|              |                   | $\frac{1}{2}$ — $\frac{3}{4}$ Mi. | 9                               | 20.0  |
|              |                   | Over $\frac{3}{4}$ Mi.            | 12                              | 25.0  |
| Groups IV—VI |                   | All Areas                         | 59                              | 6.7   |
|              |                   | within $\frac{1}{4}$ Mi.          | 54                              | 7.2   |
| IV           | Goldenstern's     | All Areas                         | 22                              | —   |
|              | 427 W. 69th       | within $\frac{1}{4}$ Mi.          | 21                              | —   |
| V            | A & P Store       | All Areas                         | 4                               | —   |
|              | 6702 S. Wentworth | within $\frac{1}{4}$ Mi.          | 4                               | —   |
| VI           | Kroger            | All Areas                         | 33                              | 11.1  |
|              | 7260 S. Wentworth | within $\frac{1}{4}$ Mi.          | 29                              | 12.5  |

<sup>1</sup> Includes customers who buy also at both non-Bowman stores along with their trade at both Bowman chain and independent stores.<sup>2</sup> Source: Table 2.<sup>3</sup> Source: Table 6-B<sup>4</sup> Source: Table 7-B

[fol. 1144]

Table 5—No Home Delivery

Summary of Replies to Bowman Sample Store Customer Questionnaires of January 1956; Total Number of Replies, 77 Response

Percentage of Customers Buying at 2 or more Different Stores

Percentage of Customers Buying at Pairs of Bowman Chain and Independent Stores<sup>1</sup>

| Group No.    | Sample Store       | Areas                             | Total No.<br>Replies <sup>2</sup> | Percentage Buying from at Least |   |
|--------------|--------------------|-----------------------------------|-----------------------------------|---------------------------------|---|
|              |                    |                                   |                                   | 2 or More Stores <sup>2</sup>   | One Pair of Bowman Chain<br>and Independent Stores <sup>1</sup> |
| Groups I—III |                    | All Areas                         | 267                               | 50.6                            | 16.9  |
|              |                    | within $\frac{1}{4}$ Mi.          | 235                               | 47.7                            | 22.7  |
| I            | Psomakos           | All Areas                         | 67                                | 37.3                            | 23.9  |
|              | 2416 W. 47th St.   | within $\frac{1}{4}$ Mi.          | 59                                | 35.6                            | 23.7  |
| II           | A & P Store        | All Areas                         | 123                               | 52.1                            | 21.8  |
|              | 2601 W. 51st St.   | within $\frac{1}{4}$ Mi.          | 107                               | 51.4                            | 24.1  |
| III          | Goldblatt's        | All Areas                         | 77                                | 60.0                            | 1.5   |
|              | 47th & So. Ashland | within $\frac{1}{4}$ Mi.          | 10                                | 80.0                            | —   |
|              |                    | $\frac{1}{4}$ — $\frac{3}{4}$ Mi. | 35                                | 56.2                            | —   |
|              |                    | Over $\frac{3}{4}$ Mi.            | 32                                | 57.5                            | 3.3   |

[fol. 1145]

Table 6A

Bowman Sample Store Customer Questionnaire Replies of January 1956: Number of Customers, With Home and No Home Delivery, Buying Their Milk From The Indicated Number of Different Stores

| Sample Store |                    |              | Customers With Home Delivery<br>1—Store |          |                 |                            |          |          |          | Customers With No Home Delivery<br>1—Store |                |                 |                            |          |          |          |                            |
|--------------|--------------------|--------------|---|----------|-----------------|----------------------------|----------|----------|----------|--|----------------|-----------------|----------------------------|----------|----------|----------|----------------------------|
| Group Number | Name and Address   | Areas        | Total                                   | No Store | At Sample Store | Other Than at Sample Store | 2 Stores | 3 Stores | 4 Stores | Total                                      | No Store       | At Sample Store | Other Than at Sample Store | 2 Stores | 3 Stores | 4 Stores | 5 or 6 Stores <sup>1</sup> |
| I            | Psomakos Super     | All Areas    | 25                                      | 6        | 10              | 1                          | 7        | 1        | —        | 67   | 1              | 35              | 6                          | 18       | 4        | 1        | 2                          |
|              | 2416 W. 47th       | Within ¼ mi. | 21                                      | 4        | 9               | 1                          | 6        | 1        | —        | 59   | —              | 34              | 4                          | 15       | 4        | —        | 2                          |
|              |                    | ¼—½ mi.      | 2                                       | —        | 1               | —                          | —        | —        | —        | 7  | —              | 1               | 2                          | 3        | —        | 1        | —                          |
|              |                    | Over ½ mi.   | 2                                       | 2        | —               | —                          | —        | —        | —        | 1  | 1              | —               | —                          | —        | —        | —        | —                          |
| II           | A & P Store        | All Areas    | 64                                      | 15       | 31              | 3                          | 11       | 3        | 1        | 123  | —              | 49              | 10                         | 44       | 17       | 2        | 1                          |
|              | 2601 W. 51st.      | Within ¼ mi. | 53                                      | 13       | 26              | 3                          | 8        | 3        | —        | 107  | —              | 46              | 6                          | 42       | 11       | 1        | 1                          |
|              |                    | ¼—½ mi.      | 6                                       | 1        | 4               | —                          | 1        | —        | —        | 11   | —              | 3               | 3                          | 1        | 3        | 1        | —                          |
|              |                    | Over ½ mi.   | 5                                       | 1        | 1               | —                          | 2        | —        | 1        | 5  | —              | —               | 1                          | 1        | 3        | —        | —                          |
| III          | Goldblatt's        | All Areas    | 24                                      | 9        | 2               | 5                          | 8        | —        | —        | 75   | 2              | 4               | 24                         | 24       | 14       | 4        | 3                          |
|              | 47th & S. Ashland  | Within ¼ mi. | 3                                       | 1        | 2               | —                          | —        | —        | —        | 10   | 1 <sup>2</sup> | —               | 1                          | 7        | 1        | —        | —                          |
|              |                    | ¼—½ mi.      | 8                                       | 3        | —               | 2                          | 3        | —        | —        | 22   | —              | 3               | 6                          | 6        | 6        | —        | —                          |
|              |                    | ½—¾ mi.      | 1                                       | 1        | —               | —                          | —        | —        | —        | 11 <sup>3</sup>                            | 3 <sup>3</sup> | —               | 5                          | 3        | 2        | —        | 1                          |
|              |                    | Over ¾ mi.   | 12                                      | 4        | —               | 3                          | 5        | —        | —        | 32   | —              | 1               | 12                         | 8        | 5        | 4        | 2                          |
| Total Groups | (I, II & III)      | All Areas    | 113                                     | 30       | 43              | 9                          | 26       | 4        | 1        | 265  | 3              | 88              | 40                         | 86       | 35       | 7        | 6                          |
|              |                    | Within ¼ mi. | 77                                      | 18       | 37              | 4                          | 14       | 4        | —        | 176  | 1              | 80              | 11                         | 64       | 16       | 1        | 3                          |
|              |                    | ¼—½ mi.      | 16                                      | 4        | 5               | 2                          | 5        | —        | —        | 40   | —              | 7               | 11                         | 10       | 9        | 2        | 1                          |
|              |                    | Over ½ mi.   | 20                                      | 8        | 1               | 3                          | 7        | —        | 1        | 49   | 2              | 1               | 18                         | 12       | 10       | 4        | 2                          |
| IV           | Goldenstern's Mart | All Areas    | 22                                      | 8        | 11              | —                          | 2        | 1        | —        | 43   | 1              | 13              | 2                          | 10       | 12       | 3        | 2                          |
|              | 427 W. 69th St.    | Within ¼ mi. | 21                                      | 7        | 11              | —                          | 2        | 1        | —        | 41 <sup>4</sup>                            | —              | 13              | 1                          | 10       | 12       | 3        | 2                          |
|              |                    | ¼—½ mi.      | 1                                       | 1        | —               | —                          | —        | —        | —        | 2 <sup>4</sup>                             | 1 <sup>2</sup> | —               | 1                          | —        | —        | —        | —                          |
|              |                    | Over ½ mi.   | —                                       | —        | —               | —                          | —        | —        | —        | —  | —              | —               | —                          | —        | —        | —        | —                          |
| V            | A & P Store        | All Areas    | 4                                       | 2        | 1               | —                          | 1        | —        | —        | 20   | 1              | 9               | —                          | 6        | 3        | —        | 1                          |
|              | 6702 S. Wentworth  | Within ¼ mi. | 4                                       | 2        | 1               | —                          | 1        | —        | —        | 18 <sup>5</sup>                            | 1              | 8               | —                          | 6        | 3        | —        | —                          |
|              |                    | ¼—½ mi.      | —                                       | —        | —               | —                          | —        | —        | —        | 1  | —              | 1               | —                          | —        | —        | —        | —                          |
|              |                    | Over ½ mi.   | —                                       | —        | —               | —                          | —        | —        | —        | —  | —              | —               | —                          | —        | —        | —        | —                          |
| VI           | Kroger Store       | All Areas    | 33                                      | 7        | 10              | 5                          | 7        | 5        | —        | 77   | —              | 20              | 12                         | 29       | 9        | 7        | —                          |
|              | 7260 S. Wentworth  | Within ¼ mi. | 29                                      | 6        | 9               | 4                          | 6        | 4        | —        | 65 <sup>4</sup>                            | —              | 18              | 8                          | 26       | 8        | 5        | —                          |
|              |                    | ¼—½ mi.      | 3                                       | —        | 1               | 1                          | 1        | —        | —        | 5 <sup>4</sup>                             | —              | 1               | 2                          | 1        | 1        | —        | —                          |
|              |                    | Over ½ mi.   | 1                                       | 1        | —               | —                          | —        | —        | —        | 7  | —              | 1               | 2                          | 2        | —        | 2        | —                          |
| Total Groups | (IV, V & VI)       | All Areas    | 59                                      | 17       | 22              | 5                          | 10       | 5        | —        | 140  | 2              | 42              | 14                         | 45       | 24       | 10       | 3                          |
|              |                    | Within ¼ mi. | 54                                      | 15       | 21              | 4                          | 9        | 5        | —        | 124  | 1              | 39              | 9                          | 42       | 23       | 8        | 2                          |
|              |                    | ¼—½ mi.      | 4                                       | 1        | 1               | 1                          | 1        | —        | —        | 8  | 1              | 2               | 3                          | 1        | 1        | —        | —                          |
|              |                    | Over ½ mi.   | 1                                       | 1        | —               | —                          | —        | —        | —        | 8  | —              | 1               | 2                          | 2        | —        | 2        | 1                          |

Source: Replies to Mail Questionnaires to Customers of above listed stores as sampled on October 27-29 and November 4-5, 1955 by Elrick-Lavidge & Co. for Bowman Dairy Co.

<sup>1</sup> No customer reported as buying milk from more than six different stores.

<sup>2</sup> Does not use fluid milk.

<sup>3</sup> Uses canned milk only.

<sup>4</sup> Excludes one unresponsive reply.

<sup>5</sup> Excludes two unresponsive replies.

[fol. 1146]

TABLE 6B

Bowman Sample Store Customer Questionnaire Replies of January 1956: Percentage of Customers, with Home and No Home Delivery, Buying Their Milk from the Indicated Number of Different Stores

| Sample Store |  |               | Customers with Home Delivery |            |                   |                              |                    | Customers with No Home Delivery |            |                   |                              |                    |
|--------------|--|---------------|------------------------------|------------|-------------------|------------------------------|--------------------|---------------------------------|------------|-------------------|------------------------------|--------------------|
| Group Number | Name and Address                         | Area          | Total %                      | 1-Store    |                   |                              | 2 or More Stores % | Total %                         | 1-Store    |                   |                              | 2 or More Stores % |
|              |  |               |                              | No Store % | At Sample Store % | Other than at Sample Store % |                    |                                 | No Store % | At Sample Store % | Other than at Sample Store % |                    |
| Groups I-III |  | All Areas     | 100                          | 26.5       | 38.1              | 8.0                          | 27.4               | 100                             | 1.1        | 33.2              | 15.1                         | 50.6               |
|              |  | Within ¼ Mile | 100                          | 23.4       | 48.0              | 5.2                          | 23.4               | 100                             | 6          | 45.5              | 6.2                          | 47.7               |
| I            | Psomakos Super<br>(2416 W. 47th St.)     | All Areas     | 100                          | 24.0       | 40.0              | 4.0                          | 32.0               | 100                             | 1.5        | 52.2              | 9.0                          | 37.3               |
|              |  | Within ¼ Mile | 100                          | 19.0       | 42.9              | 4.8                          | 33.3               | 100                             | —          | 57.6              | 6.8                          | 35.6               |
| II           | A & P Store<br>(2601 W. 51st St.)        | All Areas     | 100                          | 23.4       | 48.5              | 4.7                          | 23.4               | 100                             | —          | 39.8              | 8.1                          | 52.1               |
|              |  | Within ¼ Mile | 100                          | 24.5       | 49.0              | 5.7                          | 20.8               | 100                             | —          | 43.0              | 5.6                          | 51.4               |
| III          | Goldblatt's<br>(47th & S. Ashland Ave.)  | All Areas     | 100                          | 37.5       | 8.3               | 20.8                         | 33.4               | 100                             | 2.7        | 5.3               | 32.0                         | 60.0               |
|              |  | Within ¼ Mile | 100                          | 33.5       | 66.7              | —                            | —                  | 100                             | 10.0       | —                 | 10.0                         | 80.0               |
|              |  | ¼-¾ Mile      | 100                          | 44.4       | —                 | 22.2                         | 33.3               | 100                             | 3.1        | 9.4               | 31.3                         | 56.2               |
|              |  | Over ¾ Mile   | 100                          | 33.3       | —                 | 25.0                         | 41.7               | 100                             | —          | 3.0               | 39.4                         | 57.6               |
| Groups IV-VI |  | All Areas     | 100                          | 28.8       | 37.3              | 8.5                          | 25.4               | 100                             | 1.4        | 30.0              | 10.0                         | 58.6               |
|              |  | Within ¼ Mile | 100                          | 27.8       | 38.9              | 7.4                          | 25.9               | 100                             | 8          | 31.5              | 7.3                          | 60.5               |
| IV           | Goldenstern's Mart<br>(427 W. 69th St.)  | All Areas     | 100                          | 36.4       | 50.0              | —                            | 13.6               | 100                             | 2.3        | 30.2              | 4.7                          | 62.8               |
|              |  | Within ¼ Mile | 100                          | 33.3       | 52.4              | —                            | 14.3               | 100                             | —          | 31.7              | 2.4                          | 65.9               |
| V            | A & P Store<br>(6702 S. Wentworth Ave.)  | All Areas     | 100                          | 50.0       | 25.0              | —                            | 25.0               | 100                             | 5.0        | 45.0              | —                            | 50.0               |
|              |  | Within ¼ Mile | 100                          | 50.0       | 25.0              | —                            | 25.0               | 100                             | 5.6        | 41.4              | —                            | 50.0               |
| VI           | Kroger Store<br>(7260 S. Wentworth Ave.) | All Areas     | 100                          | 21.2       | 30.3              | 15.2                         | 33.3               | 100                             | —          | 26.0              | 15.6                         | 58.4               |
|              |  | Within ¼ Mile | 100                          | 20.7       | 31.0              | 13.8                         | 34.5               | 100                             | —          | 27.7              | 12.3                         | 60.0               |

Source: Replies to mail questionnaires to customers of the above listed stores as sampled on October 27-29 and November 4-5, 1955 by Elrick, Lavidge & Co., for Bowman Dairy Company.

[fol. 1147]

TABLE 7A

Bowman Sample Store Customer Questionnaire Replies January 1956

Number of Customers With Home and No Home Delivery, Buying Their Milk from One of the Indicated 7 Combinations of Bowman Chain, Bowman Independent and Non-Bowman Stores

| Sample Store |                                   |              |                    | Customers With Home Delivery Buying at: |                           |                               |  |                                  |                                   |   | Customers With No Home Delivery Buying at: |                           |                               |  |                                  |                                   |   |                  |
|--------------|-----------------------------------|--------------|--------------------|---|---------------------------|-------------------------------|--|----------------------------------|-----------------------------------|---|--|---------------------------|-------------------------------|--|----------------------------------|-----------------------------------|---|------------------|
| Group Number | Name and Address                  | Areas        | Total <sup>1</sup> | Only                                    |                           |                               |  |                                  |                                   | Only  |  |                           |                               |  |                                  |                                   |   |                  |
|              |                                   |              |                    | Bowman                                  |                           | Non-Bowman Stores (1 or More) | Bowman Chain & Independent Stores <sup>2</sup> | Bowman Chain & Non-Bowman Stores | Bowman Indep. & Non-Bowman Stores | Bowman Chain & Indep. Sample Stores Only <sup>3</sup> | Bowman                                     |                           | Non-Bowman Stores (1 or More) | Bowman Chain & Independent Stores <sup>2</sup> | Bowman Chain & Non-Bowman Stores | Bowman Indep. & Non-Bowman Stores | Bowman Chain & Indep. Sample Stores Only <sup>3</sup> |                  |
|              |                                   |              |                    | Chain Stores (1 or More)                | Indep. Stores (1 or More) |                               |  |                                  |                                   |   | Chain Stores (1 or More)                   | Indep. Stores (1 or More) |                               |  |                                  |                                   |   |                  |
| Groups I-III |                                   | All Areas    | 77                 | 38                                      | 12                        | 6                             | 11   | 7                                | 3                                 | (2)   | 260  | 79                        | 38                            | 30   | 44                               | 57                                | 12  | (7)              |
|              |                                   | Within ¼ Mi. | 58                 | 32                                      | 10                        | 2                             | 7  | 4                                | 3                                 | (1)   | 176  | 57                        | 37                            | 6  | 40                               | 26                                | 10  | (6)              |
| I            | Psomakos<br>2416 W. 47th St.      | All Areas    | 19                 | —                                       | 11                        | 1                             | 4  | —                                | 3                                 | (1)   | 67   | 1                         | 35                            | 6  | 16                               | —                                 | 9   | (5)              |
|              |                                   | Within ¼ Mi. | 17                 | —                                       | 9                         | 1                             | 4  | —                                | 3                                 | (1)   | 59   | 1                         | 34                            | 3  | 14                               | —                                 | 7   | (5)              |
|              |                                   | Over ¼ Mi.   | 2                  | —                                       | 2                         | —                             | —  | —                                | —                                 | —   | 8  | —                         | 1                             | 3  | 2                                | —                                 | 2   | —                |
| II           | A & P Store<br>2601 W. 51st St.   | All Areas    | 44                 | 33                                      | 1                         | 2                             | 4  | 4                                | —                                 | (1)   | 124  | 52                        | 3                             | 7  | 27                               | 32                                | 3   | (1)              |
|              |                                   | Within ¼ Mi. | 40                 | 31                                      | 1                         | 1                             | 3  | 4                                | —                                 | —   | 108  | 48                        | 3                             | 3  | 26                               | 25                                | 3   | (1)              |
|              |                                   | Over ¼ Mi.   | 4                  | 2                                       | —                         | 1                             | 1  | —                                | —                                 | (1)   | 16   | 4                         | —                             | 4  | 1                                | 7                                 | —   | —                |
| III          | Goldblatt's<br>47th & So. Ashland | All Areas    | 14                 | 5                                       | —                         | 3                             | 3  | 3                                | —                                 | —   | 69   | 26                        | —                             | 17   | 1                                | 25                                | —   | (1)              |
|              |                                   | Within ¼ Mi. | 1                  | 1                                       | —                         | —                             | —  | —                                | —                                 | —   | 9  | 8                         | —                             | —  | —                                | 1                                 | —   | —                |
|              |                                   | ¼-¾ Mi.      | 5                  | 3                                       | —                         | 1                             | 1  | —                                | —                                 | —   | 30   | 11                        | —                             | 7  | —                                | 12                                | —   | —                |
|              |                                   | Over ¾ Mi.   | 8                  | 1                                       | —                         | 2                             | 2  | 3                                | —                                 | —   | 30   | 7                         | —                             | 10   | 1                                | 12                                | —   | (1)              |
| Groups IV-VI |                                   | All Areas    | 45                 | 16                                      | 14                        | 4                             | 3  | 5                                | 3                                 | —   | 139  | 48                        | 14                            | 9  | 21                               | 33                                | 14  | (6)              |
|              |                                   | Within ¼ Mi. | 42                 | 15                                      | 14                        | 3                             | 3  | 4                                | 3                                 | —   | 124  | 41                        | 14                            | 5  | 21                               | 29                                | 14  | (6)              |
| IV           | Goldenstern's<br>427 W. 69th      | All Areas    | 17                 | —                                       | 14                        | —                             | —  | —                                | 3                                 | —   | 43   | 1                         | 13                            | 1  | 13                               | 1                                 | 14  | (4)              |
|              |                                   | Within ¼ Mi. | 17                 | —                                       | 14                        | —                             | —  | —                                | 3                                 | —   | 42   | —                         | 13                            | 1  | 13                               | 1                                 | 14  | (4) <sup>a</sup> |
|              |                                   | Over ¼ Mi.   | —                  | —                                       | —                         | —                             | —  | —                                | —                                 | —   | 1  | 1                         | —                             | —  | —                                | —                                 | —   | —                |
| V            | A & P Store<br>6702 So. Wentworth | All Areas    | 1                  | —                                       | —                         | —                             | —  | 1                                | —                                 | —   | 19   | 11                        | —                             | —  | 1                                | 7                                 | —   | (1)              |
|              |                                   | Within ¼ Mi. | 1                  | —                                       | —                         | —                             | —  | 1                                | —                                 | —   | 17   | 10                        | —                             | —  | 1                                | 6                                 | —   | (1)              |
|              |                                   | Over ¼ Mi.   | —                  | —                                       | —                         | —                             | —  | —                                | —                                 | —   | 2  | 1                         | —                             | —  | —                                | 1                                 | —   | —                |
| VI           | Kroger<br>7260 So. Wentworth      | All Areas    | 27                 | 16                                      | —                         | 4                             | 3  | 4                                | —                                 | —   | 77   | 36                        | 1                             | 8  | 7                                | 25                                | —   | (1)              |
|              |                                   | Within ¼ Mi. | 24                 | 15                                      | —                         | 3                             | 3  | 3                                | —                                 | —   | 65   | 31                        | 1                             | 4  | 7                                | 22                                | —   | (1)              |
|              |                                   | Over ¼ Mi.   | 3                  | 1                                       | —                         | 1                             | —  | 1                                | —                                 | —   | 12   | 5                         | —                             | 4  | —                                | 3                                 | —   | —                |

Source: Replies to Mail Questionnaires to customers of the above listed stores as sampled on October 27-29 and November 4-5, 1955, by Elrick, Lavidge &amp; Co. for Bowman Dairy Co.

<sup>1</sup> Excludes customers who have home delivery for all their milk requirements which is the difference between this table's totals and those of Table 6A, also replies indicating no milk purchased.<sup>2</sup> Includes those replies showing customers trading at 3 or more stores at least two of which are Bowman Chain and Independent Stores.<sup>3</sup> These replies are duplicated in those tabulated as "Bowman Chain & Independent Stores" (Col. 5 and 13 respectively for Home Delivery and No Home Delivery).<sup>4</sup> Includes those customers trading also at Kroger Store at 6914 So. Wentworth.



TABLE 7B

Bowman Sample Store Customer Questionnaire Replies January 1956  
 Percentage of Customers With Home and No Home Delivery, Buying Their Milk from one of the Indicated 7 Combination of  
 Bowman Chain, Bowman Independent, and Non-Bowman Stores

| Sample Store |  |               | Customers With Home Delivery Buying at: |                               |                                |                         |   |                                    |                                     | Customers With No Home Delivery at: |                               |                                |                         |   |                                    |                                     |  |     |
|--------------|--|---------------|---|-------------------------------|--------------------------------|-------------------------|---|------------------------------------|-------------------------------------|-------------------------------------|-------------------------------|--------------------------------|-------------------------|---|------------------------------------|-------------------------------------|--|-----|
| Group Number | Name and Address                       | Areas         | Total<br>%                              | Bowman                        |                                | Non-Bowman              | Bowman Chain and Indep. Stores <sup>1</sup> | Bowman Chain and Non-Bowman Stores | Bowman Indep. and Non-Bowman Stores | Total<br>%                          | Bowman                        |                                | Non-Bowman              | Bowman Chain and Indep. Stores <sup>1</sup> | Bowman Chain and Non-Bowman Stores | Bowman Indep. and Non-Bowman Stores | Bowman Chain and Indep. Sample Stores Only |     |
|              |  |               |   | Chain Stores (1 or more)<br>% | Indep. Stores (1 or more)<br>% | Stores (1 or more)<br>% |   |                                    |                                     |                                     | Chain Stores (1 or more)<br>% | Indep. Stores (1 or more)<br>% | Stores (1 or more)<br>% |   |                                    |                                     |  |     |
| Groups I-III |  |               | All Areas                               | 100                           | 49.3                           | 15.6                    | 7.8   | 14.3                               | 9.1                                 | 3.9                                 | 100                           | 30.4                           | 14.6                    | 11.5  | 16.9                               | 21.9                                | 4.6  | 2.7 |
|              |  | Within ¼ Mile | 100                                     | 55.2                          | 17.2                           | 3.4                     | 12.1  | 6.9                                | 5.2                                 | 100                                 | 32.4                          | 21.0                           | 3.4                     | 22.7  | 14.8                               | 5.7                                 | 3.4  |     |
| I            | Psomakos<br>2416 W. 47th St.           | All Areas     | 100                                     | —                             | 57.9                           | 5.3                     | 21.0  | —                                  | 15.8                                | 100                                 | 1.5                           | 52.2                           | 9.0                     | 23.9  | —                                  | 13.4                                | 7.5  |     |
|              |  | Within ¼ Mile | 100                                     | —                             | 53.0                           | 5.9                     | 23.5  | —                                  | 17.6                                | 100                                 | 1.7                           | 57.6                           | 5.1                     | 23.7  | —                                  | 11.9                                | 8.5  |     |
| II           | A & P Stores<br>2601 W. 51st St.       | All Areas     | 100                                     | 75.0                          | 2.3                            | 4.5                     | 9.1   | 9.1                                | —                                   | 100                                 | 41.9                          | 2.4                            | 5.7                     | 21.8  | 25.8                               | 2.4                                 | 8  |     |
|              |  | Within ¼ Mile | 100                                     | 77.5                          | 2.5                            | 2.5                     | 7.5   | 10.0                               | —                                   | 100                                 | 44.4                          | 2.8                            | 2.8                     | 24.1  | 23.1                               | 2.8                                 | 9  |     |
| III          | Goldblatt's<br>47th & So. Ashland Ave. | All Areas     | 100                                     | 35.8                          | —                              | 21.4                    | 21.4  | 21.4                               | —                                   | 100                                 | 37.7                          | —                              | 24.6                    | 1.5   | 36.2                               | —                                   | 1.4  |     |
|              |  | Within ¼ Mile | 100                                     | 100.0                         | —                              | —                       | —   | —                                  | —                                   | 100                                 | 88.9                          | —                              | —                       | —   | 11.1                               | —                                   | —  |     |
|              |  | ¼-½ Mile      | 100                                     | 60.0                          | —                              | 20.0                    | 20.0  | —                                  | —                                   | 100                                 | 36.7                          | —                              | 23.3                    | —   | 40.0                               | —                                   | —  |     |
|              |  | Over ½ Mile   | 100                                     | 12.5                          | —                              | 25.0                    | 25.0  | 37.5                               | —                                   | 100                                 | 23.4                          | —                              | 33.3                    | 3.3   | 40.0                               | —                                   | 3.3  |     |
| Groups IV-VI |  |               | All Areas                               | 100                           | 35.5                           | 31.1                    | 8.9   | 6.7                                | 11.1                                | 6.7                                 | 100                           | 34.5                           | 10.1                    | 6.5   | 15.1                               | 23.7                                | 10.1                                       | 4.3 |
|              |  | Within ¼ Mile | 100                                     | 35.7                          | 33.3                           | 7.1                     | 7.2   | 9.5                                | 7.2                                 | 100                                 | 33.1                          | 11.3                           | 4.0                     | 16.9  | 23.4                               | 11.3                                | 4.8  |     |
| IV           | Goldenstern's<br>427 W. 69th St.       | All Areas     | 100                                     | —                             | 82.4                           | —                       | —   | —                                  | 17.6                                | 100                                 | 2.3                           | 30.3                           | 2.3                     | 30.2  | 2.3                                | 32.6                                | 9.3  |     |
|              |  | Within ¼ Mile | 100                                     | —                             | 82.4                           | —                       | —   | —                                  | 17.6                                | 100                                 | —                             | 31.0                           | 2.4                     | 31.0  | 2.4                                | 33.2                                | 9.5  |     |
| V            | A & P Store<br>6702 S. Wentworth Ave.  | All Areas     | 100                                     | —                             | —                              | —                       | —   | 100.0                              | —                                   | 100                                 | 57.9                          | —                              | —                       | 5.3   | 36.8                               | —                                   | 5.3  |     |
|              |  | Within ¼ Mile | 100                                     | —                             | —                              | —                       | —   | 100.0                              | —                                   | 100                                 | 58.8                          | —                              | —                       | 5.9   | 35.3                               | —                                   | 5.9  |     |
| VI           | Kroger<br>7206 S. Wentworth Ave.       | All Areas     | 100                                     | 59.3                          | —                              | 14.8                    | 11.1  | 14.8                               | —                                   | 100                                 | 46.8                          | 1.3                            | 10.3                    | 9.1   | 32.5                               | —                                   | 1.3  |     |
|              |  | Within ¼ Mile | 100                                     | 62.5                          | —                              | 12.5                    | 12.5  | 12.5                               | —                                   | 100                                 | 47.7                          | 1.5                            | 6.2                     | 10.8  | 33.8                               | —                                   | 1.5  |     |

Source: Based on Table 7A.

<sup>1</sup> Includes those customers buying milk from Bowman chain and independent stores and also from Non-Bowman stores.

[fol. 1149]

## REBUTTAL EXHIBIT G-1

Copy

Department of Justice  
Room 404, United States Courthouse  
Chicago 4, Illinois

60-139-64

January 17, 1956

On one of the five days during the period October 27 through November 5, 1955, a representative of a local marketing research agency interviewed you as you left one of the three stores located at the following Chicago, Illinois addresses:

1. Psomakos Super Mart, 2416 West 47th Street
2. A & P Store, 2601 West 51st Street
3. Goldblatt's Department Store, 47th & So. Ashland Avenue

This interviewer asked you whether or not you had purchased, at that time, any dairy products from the store you were leaving.

With respect to your purchases of milk, will you therefore kindly check the appropriate answers to the questions in the attached list and return your answers in the enclosed return envelope which requires *no postage*.

Your immediate cooperation in answering these questions will be greatly appreciated.

Sincerely yours, Stanley N. Barnes, Assistant Attorney General. By s/ Earl A. Jinkinson, Chief, Midwest Office, Antitrust Division.

[fol. 1150]

## REBUTTAL EXHIBIT G-2

## Copy

## Questionnaire

1. Do you have your milk delivered at home? Yes No  
 2. If you buy milk from the following stores, indicate with an "X" the frequency of your purchases:

| Name and Address of Store                                       | Occa-<br>sionally | Half the<br>Time | All the<br>Time |
|---|-------------------|------------------|-----------------|
| (a) Psomakos Super Mart, 2416 W. 47th . . .                     | _____             | _____            | _____           |
| (b) Kroger Store, So. Archer & So. Kedzie . .                   | _____             | _____            | _____           |
| (c) A & P Store, 2601 W. 51st St. . . . .                       | _____             | _____            | _____           |
| (d) Food Mart, 2640 W. 51st St. . . . .                         | _____             | _____            | _____           |
| (e) Goldblatt's Dept. Store, 47th & So.<br>Ashland Ave. . . . . | _____             | _____            | _____           |
| (f) A & P Store, 1615 W. 48th St. . . . .                       | _____             | _____            | _____           |
| (g) Bill's Grocery and Meats, 4959 So. Laffin<br>St. . . . .    | _____             | _____            | _____           |
| (h) Kroger Store, 5104 S. Ashland Ave. . . .                    | _____             | _____            | _____           |
| (i) Kroger Store, W. 50th & So. Halsted . . .                   | _____             | _____            | _____           |
| (j) Marge's Food Store, 901 W. 51st St. . . .                   | _____             | _____            | _____           |
| (k) Other Stores: Give names and addresses .                    | _____             | _____            | _____           |

(1-17-56)

[fol. 1151]

## REBUTTAL EXHIBIT II-1

## Copy

## Department of Justice

Room 404, United States Courthouse

Chicago 4, Illinois

60-139-64

January 17, 1956

On one of the three days during the period October 27 through October 29, 1955, a representative of a local marketing research agency interviewed you as you left one of the three stores located at the following Chicago, Illinois addresses:

1. Goldenstern's Market (Charlie's Market), 427 W. 69th St.
2. A & P Store, 6702 South Wentworth Avenue
3. Kroger Store, 7260 South Wentworth Avenue

This interviewer asked you whether or not you had purchased, at that time, any dairy products from the store you were leaving.

With respect to your purchases of milk, will you therefore kindly check the appropriate answers to the questions in the attached questionnaire, and return your answers in the enclosed return envelope which requires *no postage*.

You immediate cooperation in answering these questions will be greatly appreciated.

Sincerely yours, Stanley N. Barnes, Assistant Attorney General. By s/ Earl A. Jinkinson, Chief, Midwest Office, Antitrust Division.

[fol. 1152]

## REBUTTAL EXHIBIT H-2

### Copy

#### Questionnaire

1. Do you have your milk delivered at home? Yes No  
2. Indicate with an "X" the frequency with which you buy milk from the following store or stores:

| Name and Address of Store   | Occa-<br>sionally | Half the<br>Time | All the<br>Time |
|---|-------------------|------------------|-----------------|
| (a) A & P Store, 6702 So. Wentworth                                   |                   |                  |                 |
| (b) Jeanie's Grocery, 224 West 69th St.                               |                   |                  |                 |
| (c) Kroger Store, 6914 So. Wentworth                                  |                   |                  |                 |
| (d) Square Deal Grocery & Mart, 339 W. 71st                           |                   |                  |                 |
| (e) Kroger Store, 7260 So. Wentworth                                  |                   |                  |                 |
| (f) Grocery Store, 7400 So. Vincennes                                 |                   |                  |                 |
| (g) Grocery Store, 77th & So. Vincennes                               |                   |                  |                 |
| (h) High-Low Food Store, Corner of East 71st<br>and South Park Avenue |                   |                  |                 |
| (i) Pal-O-Mine Grocery, 500 E. 71st St.                               |                   |                  |                 |
| (j) Busy Bee Grocery, 600 E. 71st St.                                 |                   |                  |                 |
| (k) Triangle Market, 603 E. 71st St.                                  |                   |                  |                 |
| (l) J. H. Williamson & Chris Miller Meat<br>Mart, 405 East 75th St.   |                   |                  |                 |
| (m) High-Low Food Store, 7018 So. Halsted                             |                   |                  |                 |
| (n) Square Deal Mart, 6904 So. Halsted                                |                   |                  |                 |
| (o) Grocery and Meat Store, 524 W. 71st St.                           |                   |                  |                 |
| (p) Goldenstern's, 427 W. 69th St.                                    |                   |                  |                 |
| (q) Other Stores: Give names and addresses:                           |                   |                  |                 |

(1-17-56)

Groups IV--VI

|    |                   |                |     |      |      |
|----|-------------------|----------------|-----|------|------|
|    |                   | All Areas      | 146 | 58.6 | 15.1 |
|    |                   | within 1/4 Mi. | 128 | 60.5 | 16.9 |
| IV | Goldenstern's     | All Areas      | 45  | 62.8 | 30.2 |
|    | 427 W. 89th St.   | within 1/4 Mi. | 42  | 65.9 | 31.0 |
| V  | A & P Store       | All Areas      | 22  | 50.0 | 5.3  |
|    | 6702 S. Wentworth | within 1/4 Mi. | 20  | 50.0 | 5.9  |
| VI | Kroger            | All Areas      | 79  | 58.4 | 9.1  |
|    | 7206 S. Wentworth | within 1/4 Mi. | 66  | 60.0 | 10.8 |

<sup>1</sup> Includes customers who buy also at both non-Bowman stores along with their trading at both Bowman chain and independent stores.

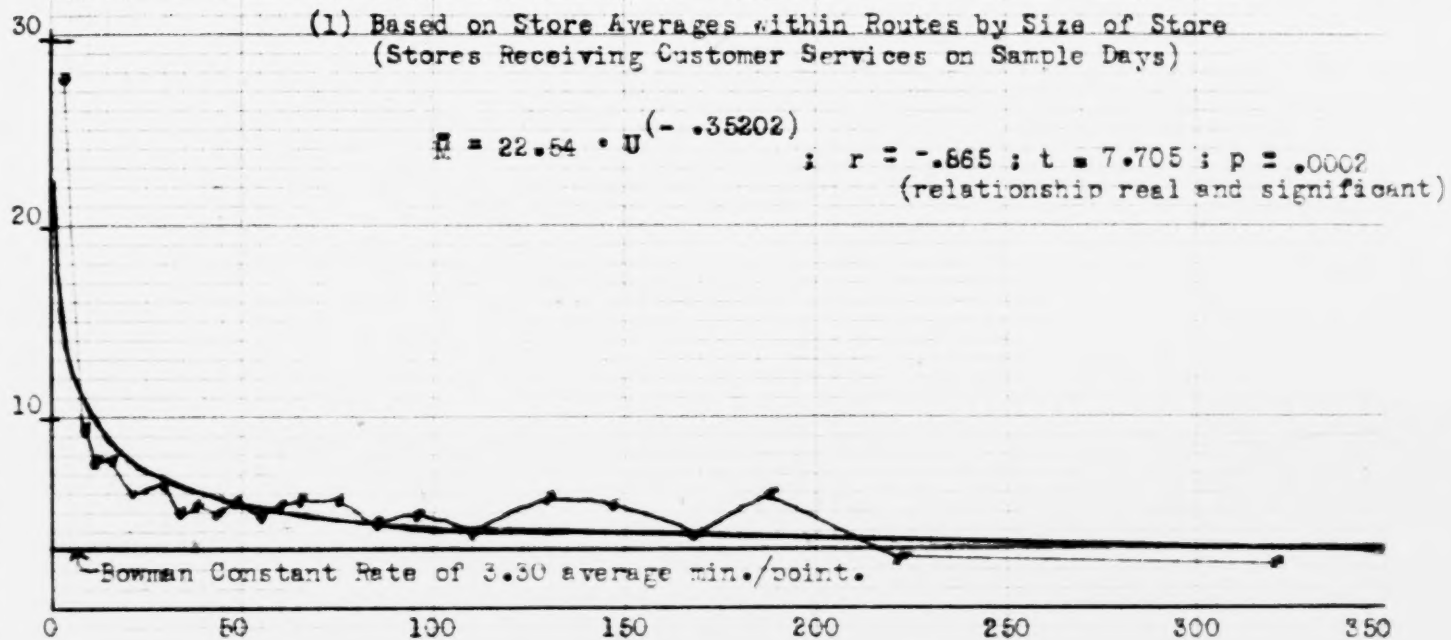
<sup>2</sup> Source: Table 2

<sup>3</sup> Source: Table 6-B

<sup>4</sup> Source: Table 7-B

CUSTOMER SERVICES TO INDEPENDENTS ON 33 ELSTON DIVISION ROUTES  
RELATIONSHIP OF AVERAGE MINUTES PER POINT TO TOTAL NUMBER OF POINTS  
DELIVERED DAILY TO STORE, BASED ON THE 1949 ROUTE TIME STUDIES.

Average Minutes Per Point Belivered Daily (in 1/100 minutes) - ( $\bar{M}$ )



(2) Relationship in (1) Adjusted to Bowman Average of 3.30 min./point.  
At the Average Size of Store to include stores not receiving  
Customer Service on Sample Days.

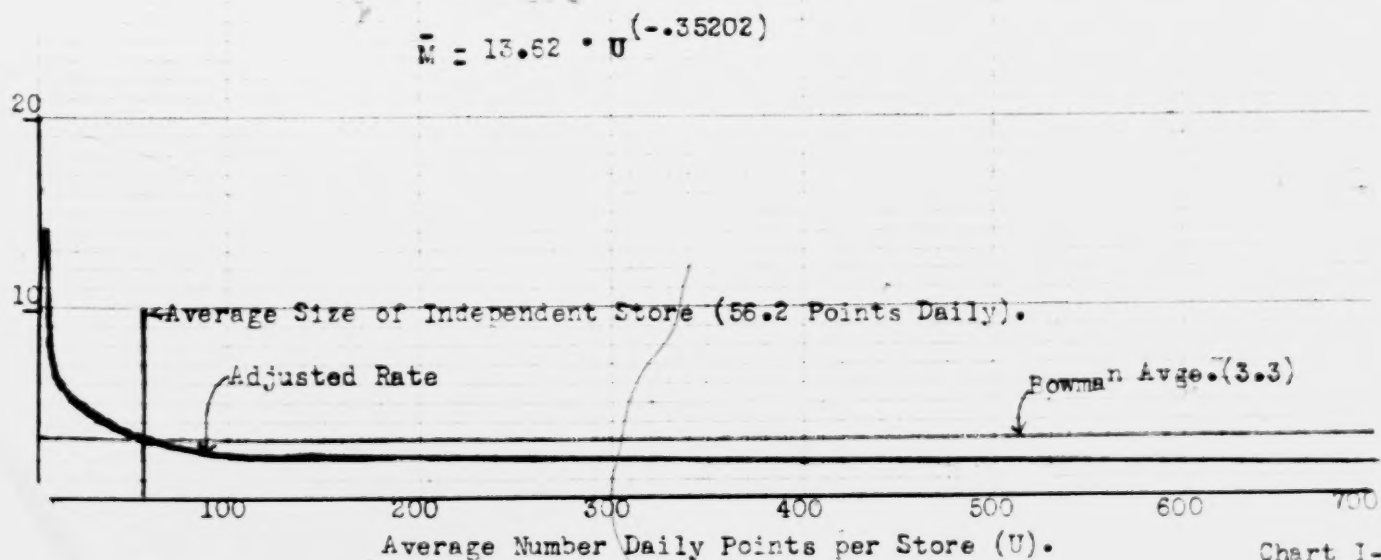


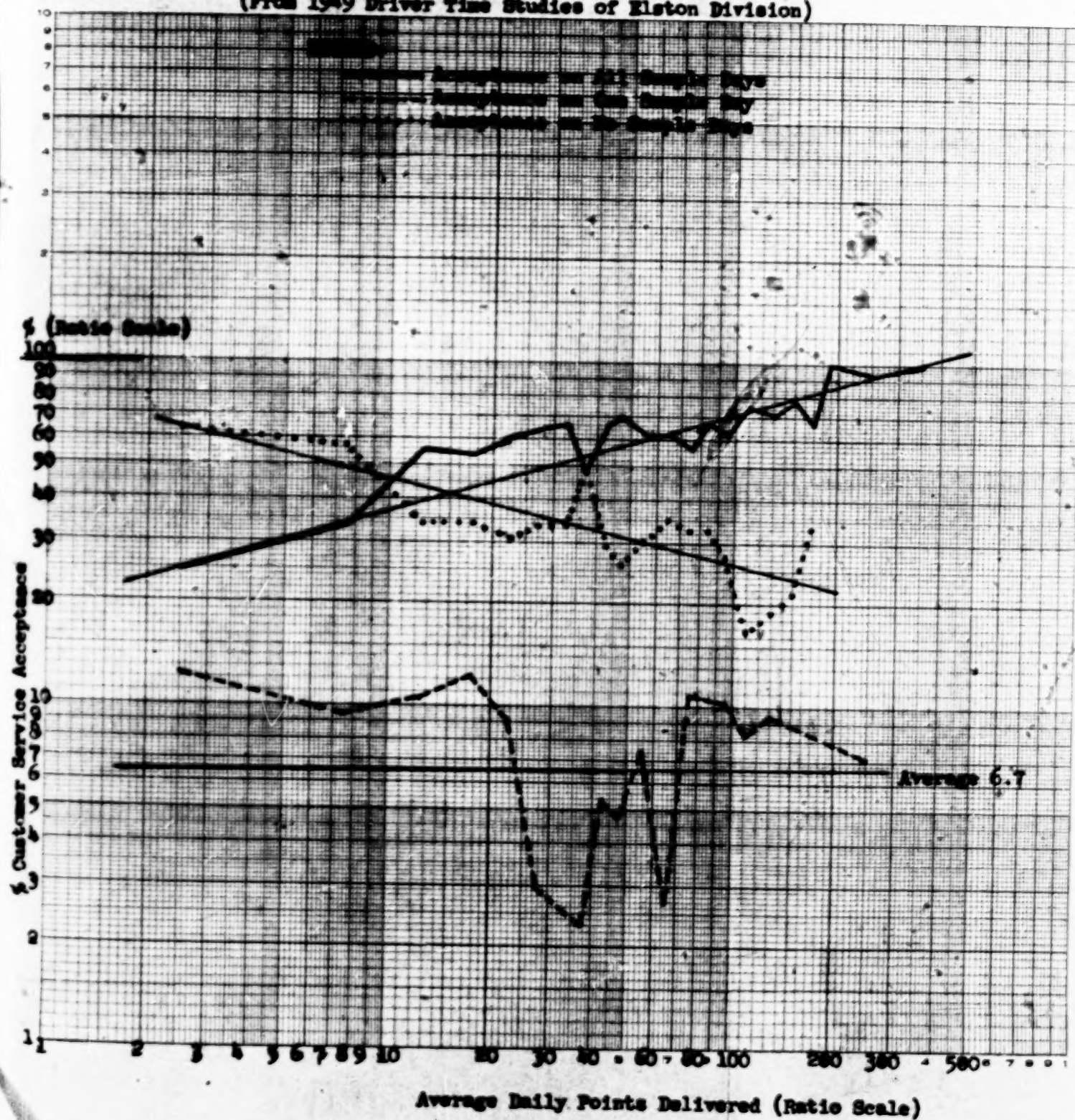
Chart I-A

1153



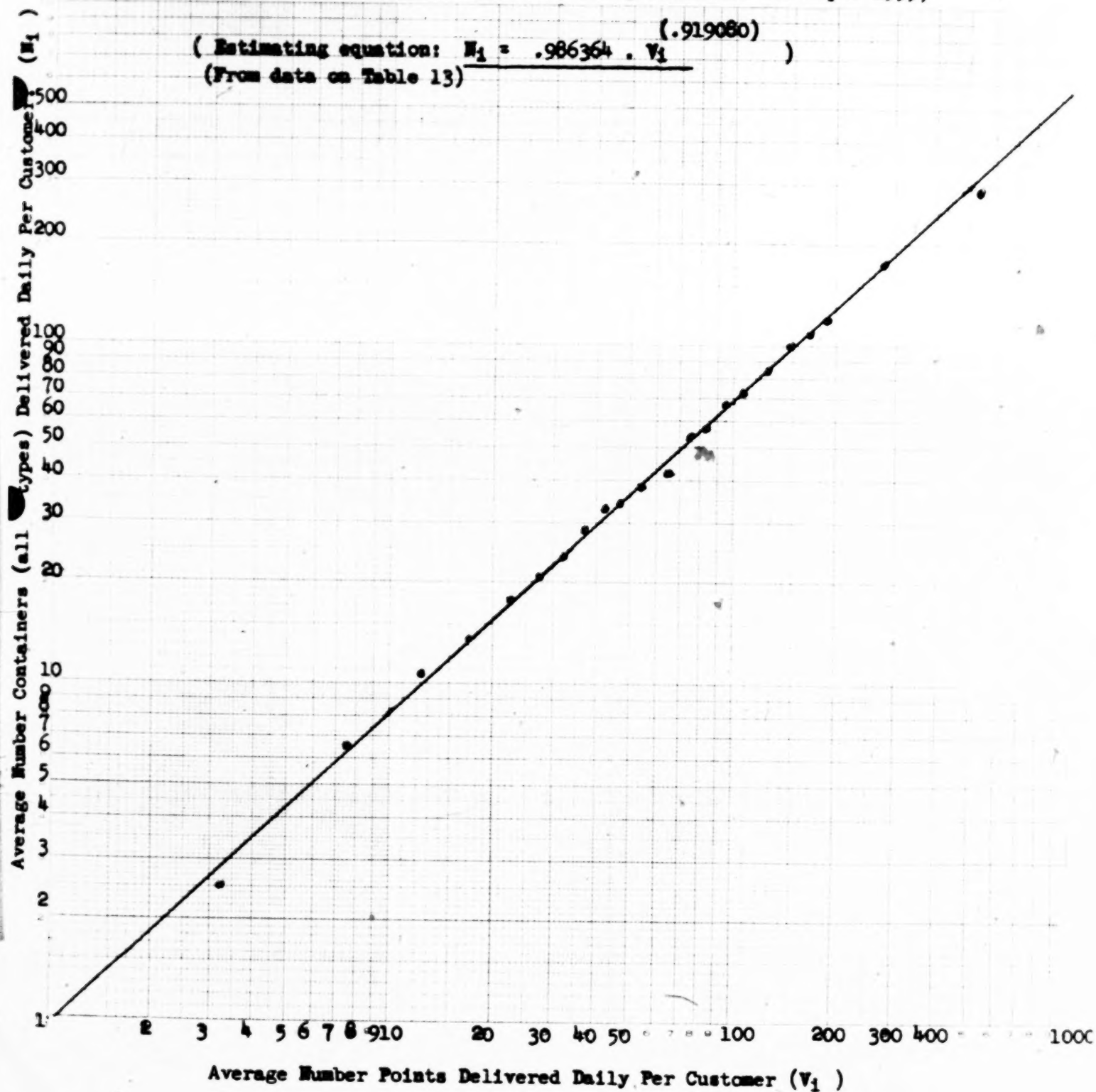
# Relative Customer Service Acceptance By Size of Independent Store

(From 1949 Driver Time Studies of Elston Division)

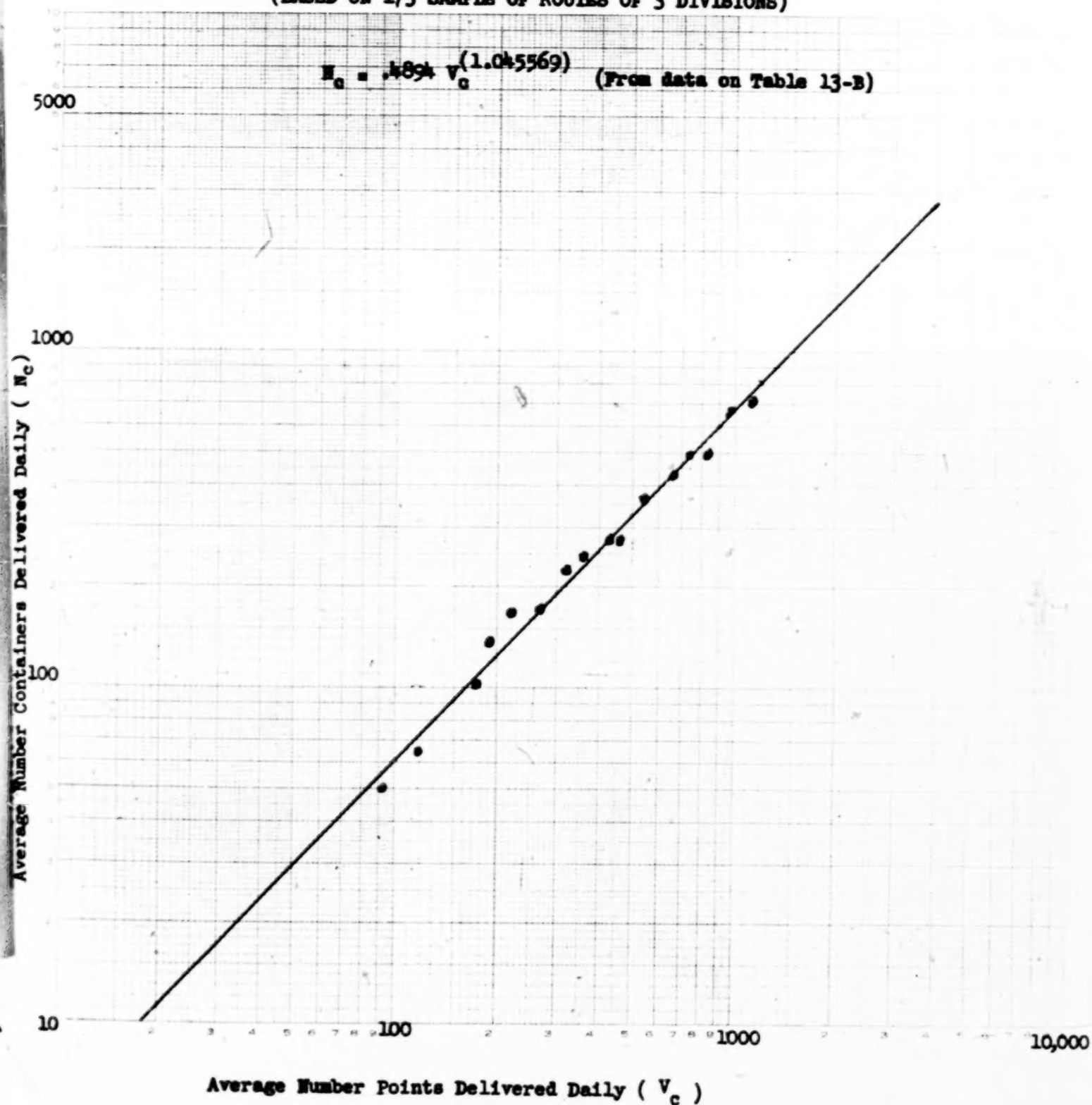




**BOWMAN INDEPENDENT STORE CUSTOMERS: REBUTTAL EVIDENCE**  
**RELATIONSHIP OF TOTAL NUMBER OF POINTS AND CONTAINERS DELIVERED DAILY PER CUSTOMER**  
 (Based on 1/3 Sample of Routes of all 3 Divisions for Sept. 1955)

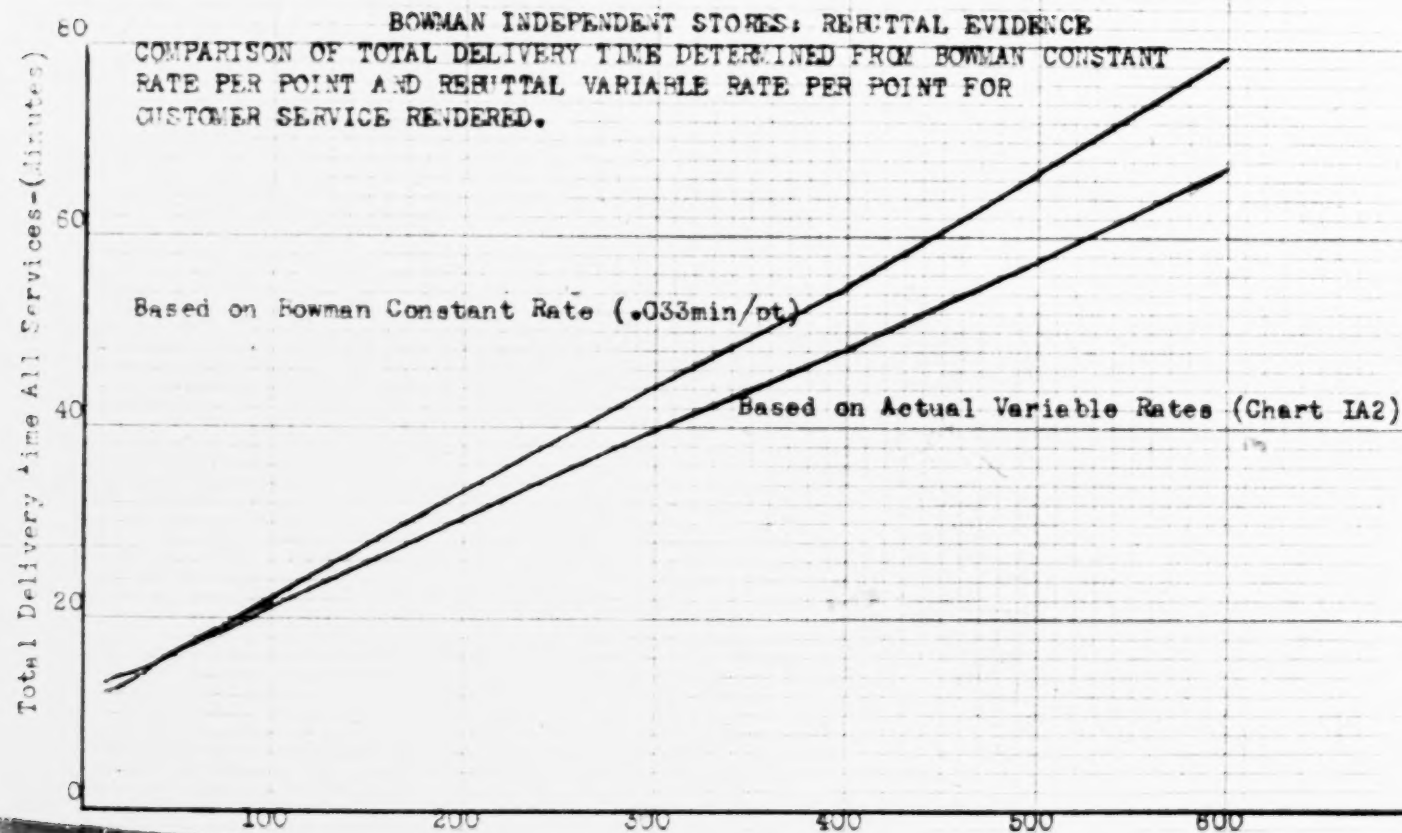


**BOWMAN CHAIN STORE CUSTOMERS: REBUTTAL EVIDENCE**  
**RELATIONSHIP OF TOTAL NUMBER POINTS AND CONTAINERS DELIVERED DAILY PER CUSTOMER, SEPT. 1955.**  
**(BASED ON 1/3 SAMPLE OF ROUTES OF 3 DIVISIONS)**



[fol. 1154]

CHARTS I-B & C

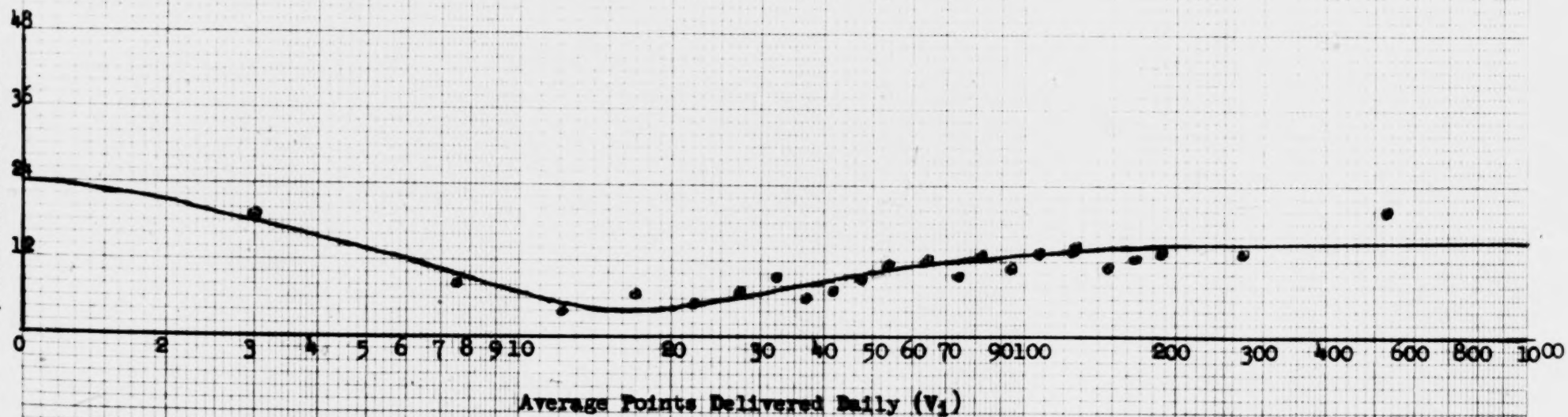


POWMAN INDEPENDENT STORES: REBUTTAL EVIDENCE  
COMPARISON OF DIFFERENCES BETWEEN MAXIMUM AVAILABLE MARGINS OF INDEPENDENTS AND  
CHAINS BASED ON POWMAN CONSTANT TIME RATES AND ON REBUTTAL VARIABLE TIME RATES FOR  
CUSTOMER SERVICES RENDERED THE INDEPENDENTS.

BOWMAN INDEPENDENT STORES: REBUTTAL EVIDENCE  
COMPARISON OF DIFFERENCES BETWEEN MAXIMUM AVAILABLE MARGINS OF INDEPENDENTS AND  
CHAINS BASED ON BOWMAN CONSTANT TIME RATES AND ON REBUTTAL VARIABLE TIME RATES FOR  
CUSTOMER SERVICES RENDERED THE INDEPENDENTS.

CHART IV-A

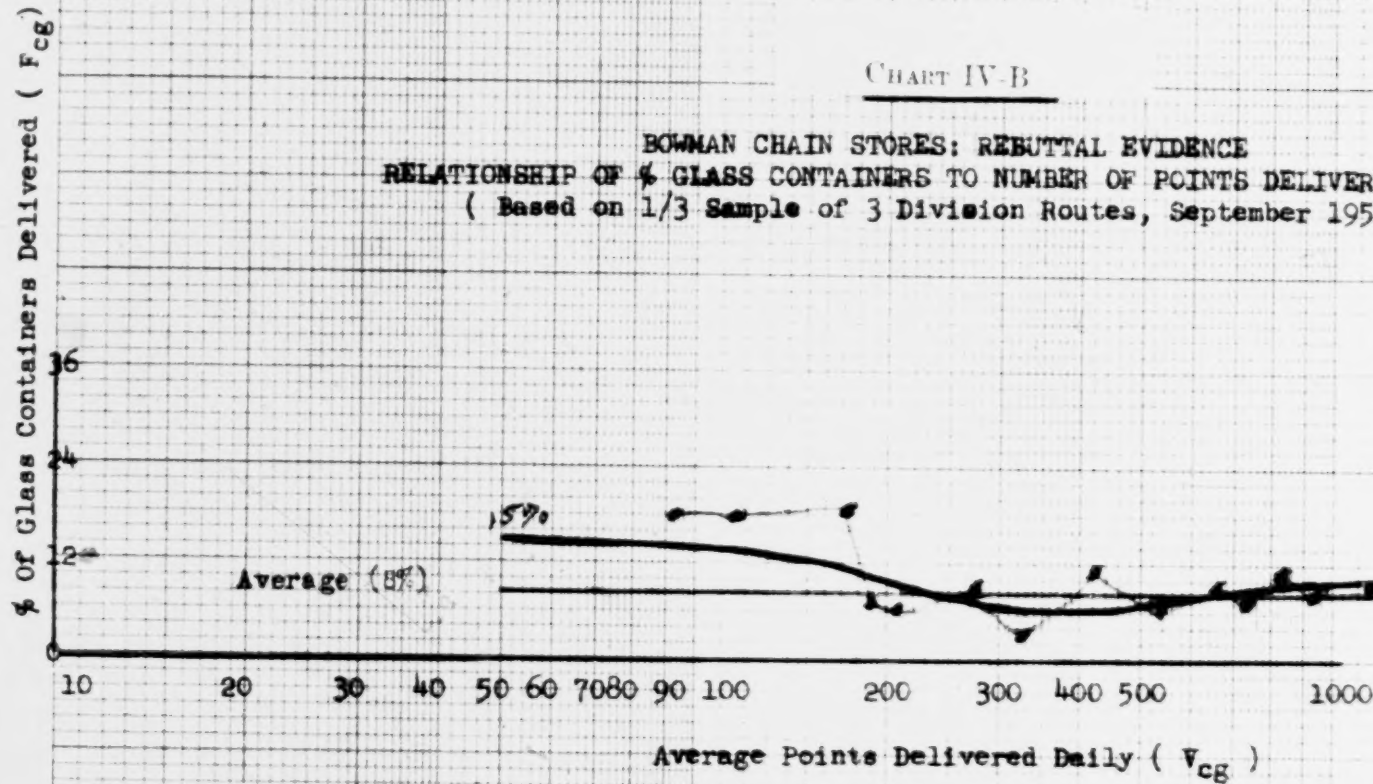
BOWMAN INDEPENDENT STORES: REBUTTAL EVIDENCE  
 RELATIONSHIP OF % GLASS CONTAINERS TO NUMBER OF POINTS DELIVERED DAILY  
 (BASED ON 1/3 ROUTE SAMPLE OF ALL 3 DIVISIONS)  
 (SEPTEMBER 1955)

 % of Glass Containers Delivered Daily (V<sub>2</sub>)




# CHART IV-B

BOWMAN CHAIN STORES: REBUTTAL EVIDENCE  
 RELATIONSHIP OF % GLASS CONTAINERS TO NUMBER OF POINTS DELIVERED DAILY  
 ( Based on 1/3 Sample of 3 Division Routes, September 1955 )





[Vol. 1160] TABLE SA: BOWMAN WHOLESALE ACCOUNTS

Determination of Daily Cost Rates for Allocation to Independent and Chain Stores for March and December 1955

## A Miscellaneous Divisional Expense

Basis of Allocation to Customers: Per Customer per day rate  
(Tables 16 A and 16 B)

| Item                          | March<br>1955 | December<br>1955 |
|-------------------------------|---------------|------------------|
| 1. Number of Customers Served | 3,389         | 3,154            |
| 2. Number of Delivery Days    | 27            | 27               |
| 3. Number of Customer Days    | 91,503        | 85,131           |
| 4. Misc. Division Expenses    | \$30,186      | \$25,984         |
| 5. Cost per Customer per Day  | \$ 32989      | \$ 30522         |

Source: *Rebuttal Exhibits K* (1-3), for data supplied by Bowman Co. upon request. These data are those from which Bowman derived its estimates of average daily total delivery cost rates of \$182 for the March 1955 test and \$185 for the January 1956 test based on December 1955 data, as per Rebuttal Exhibit K-1. All data cover all 4 Bowman wholesale divisions: Elston, Forest, and South.

[Vol. 1161] TABLE SB: BOWMAN WHOLESALE ACCOUNTS

Determination of Daily Cost Rates for Allocation to Independent and Chain Stores for March and December 1955

## B Division Office Personnel

(Incl. Benefits and Vacation Time)

Basis of Allocation to Customers: Per Customer Day  
(Tables 16 A and 16 B)

| Item   | March<br>1955 | December<br>1955 |
|--|---------------|------------------|
| 1. Number Customers Served                             | 3,389         | 3,154            |
| 2. Number Delivery Days                                | 27            | 27               |
| 3. Number Customer Days                                | 91,503        | 85,131           |
| 4. Division Office Salaries & Wages                    | \$17,354      | \$17,163         |
| Prorata Vacation & Benefit Costs                       | 2,202*        | 1,776**          |
| Total Division Personnel Cost                          | \$19,556      | \$18,939         |
| 5. Average Div. Office Personnel Cost per Customer Day | \$ 213709     | \$ 222469        |

\* At \$1269134 per Dollar of Salary &amp; Wages - March

\*\* At \$1034958 per Dollar of Salary &amp; Wages - December

Source: *Rebuttal Exhibits K* (1-3), for data supplied by Bowman Co. upon request. These data are those from which Bowman derived its estimates of average daily total delivery cost rates of \$182 for the March 1955 test and \$185 for the January 1956 test based on December 1955 data, as per Rebuttal Exhibit K-1. All data cover all 4 Bowman wholesale divisions: Elston, Forest, and South.

[161.1162] TABLE 8C: BOWMAN WHOLESALE ACCOUNTS

Determination of Daily Cost Rates for Allocation to Independent and Chain Stores for March and December 1955

## C. Bottle Expenses

Basis of Allocation to Customers: Glass Containers Delivered  
(Tables 16 A and 16 B)

| Item   | March<br>1955 | December<br>1955 |
|--|---------------|------------------|
| 1. Total Number Glass Containers Delivered                                   | 642,083       | 1,242,401        |
| 2. Total Net Bottle Expenses and Allowances<br>(+ is expense (-) net income) | +\$16,643     | -\$778 *         |
| 3. Total Net Bottle Expense per Glass Container                              | \$ 0.259203   | - \$ 0.000620    |

\* This negative Bottle expense means that more Bottle Deposits and Losses were received than paid out.

Source: *Rebuttal Exhibits K* (1-3), for data supplied by Bowman Co. upon request. These data are those from which Bowman derived its estimates of average daily total delivery cost rates of \$182 for their March 1955 test and \$185 for their January 1956 test based on December 1955 data, as per *Rebuttal Exhibit K 1*. All data cover all 3 Bowman wholesale divisions: Elston, Forest, and South.

[161.1163] TABLE 8D: BOWMAN WHOLESALE ACCOUNTS

Determination of Daily Cost Rates for Allocation to Independent and Chain Stores for March and December 1955

## D. Milkroom Wages

(Incl. Vacation and Benefits)

Basis of Allocation to Customers: Number of Equivalent Cases Delivered  
(Tables 16 A and 16 B)

| Item                            | March<br>1955 | December<br>1955 |
|---------------------------------|---------------|------------------|
| 1. Total Number Cases Delivered | 150,019       | 183,824          |
| 2. Milkroom Wages               | \$30,840      | \$32,146         |
| Pro rata Vacation and Benefits  | 3,910*        | 3,427**          |
| Total Milkroom Cost             | \$34,720      | \$35,473         |
| 3. Milkroom Cost per Case       | \$ 231437     | \$ 192973        |

Source: *Rebuttal Exhibits K* (1-3), for data supplied by Bowman Company upon request. These data are those from which Bowman derived its estimates of average daily total delivery cost rates of \$182 for the March 1955 test and \$185 for the January 1956 test based on December 1955 data, as per *Rebuttal Exhibit K 1*. All data cover all three Bowman wholesale divisions: Elston, Forest, and South.

\* At \$1269134 per dollar of Salaries and Wages for March 1955.

\*\* At \$1034958 per dollar of Salaries and Wages for December 1955.

(fol. 1164) TABLE 8. L. BOWMAN WHOLE-SALE ACCOUNTS.  
Determination of Daily Cost Rates for Allocation to Independent and Chain Stores for March and December 1955

I. Driver's Commissions

Basis of Allocation to Customers: Volume as Measured by Number of Points Delivered

(Tables 16 A and 16 B)

| Item                             | March<br>1955 | December<br>1955 |
|----------------------------------|---------------|------------------|
| 1. Total Number Points Delivered | 7,222,640     | 8,258,700        |
| 2. Total Driver's Commission     | \$44,087      | \$47,286         |
| 3. Commission Cost per Point     | \$ .006104    | \$ .005725       |

Source: *Rebuttal Exhibit K (1-3)*, for data supplied by Bowman Company upon request. These data are those from which Bowman derives its estimates of average daily total delivery cost rates of \$182 for the March 1955 test, and \$185 for the January 1956 test, the latter being based on December 1955 data as per Rebuttal Exhibit K-1. All data cover all three Bowman wholesale divisions, Elston, Forest, and South.

[fol. 1165] **TABLE 8-F: BOWMAN WHOLESALE ACCOUNTS**  
 Determination of Daily Cost Rates for Allocation to Independent and Chain Stores for March and December 1955

**F. Driver's Service Wages**  
 (Including Pro Rata Vacation & Benefits)

Basis of Allocation to Customers: Bowman Driver Service Time Study as of 1949 as modified by revised Customer Service Time Schedule and revised Schedules of Glass Containers and Number of Cases by Size of Store (Table 15)

| Item   | March<br>1955       | December<br>1955    |
|--|---------------------|---------------------|
| 1. Total Driver Wages & Salaries.....  | \$101,529           | \$ 98,459           |
| Vacation & Benefits.....   | 12,885 <sup>1</sup> | 10,190 <sup>2</sup> |
| Total Driver Costs.....  | \$114,414           | \$108,649           |
| 2. Total Time from Plant to, on, and<br>From Route (minutes): <sup>3</sup> ..... | 21,380 00           | 21,380 00           |
| a. Driver Service Time <sup>4</sup> .....  | 16,689 89           | 16,689 89           |
| b. Transportation Time <sup>4</sup> .....  | 4,690 11            | 4,690 11            |
| 3. No. Route Sample Days in Study.....   | 43                  | 43                  |
| 4. Allocation of Total Driver Cost For:  |                     |                     |
| a. Driver Service Time.....  | \$ 89,315           | \$ 84,815           |
| b. Transportation Time.....  | 25,099              | 23,834              |
| c. No. of Delivery Route Days <sup>4</sup> .....                                 | 4,900               | 4,675               |
| 5. Average Driver Cost per Minute of<br>Service Time:                            |                     |                     |
| a. Average No. of Driver Service Minutes<br>per Route per Sample Day.....        | 388 14              | 388 14              |
| b. Average Route Day Driver Service<br>Cost.....                                 | \$ 18 1422          | \$ 18 1422          |
| c. Average Driver Cost per Minute of<br>Service Time.....                        | \$ 046961           | \$ 046741           |

Source: *Rebuttal Exhibits K-(1-5)*, for data supplied by Bowman Co. upon request. These data are those from which Bowman derived its estimates of average daily total delivery cost rates of \$.182 for the March 1955 test and \$.185 for the January 1956 test based on December 1955 data, as per *Rebuttal Exhibit K-1*. All data, except that from 1949 time study, cover all 3 Bowman wholesale divisions: Elston, Forest and South.

<sup>1</sup> At \$.1269134 per dollar of Salaries and Wages for March 1955.

<sup>2</sup> At \$.1034958 per dollar of Salaries and Wages for December 1955.

<sup>3</sup> Data are from 1949 Time Study of Elston Division Routes (*Table 9*).

<sup>4</sup> Includes Driver's office time, load and unload truck, route book keeping; but excludes personal, lunch and telephone time.

<sup>5</sup> Time Driver spends on: Get Vehicle (#3), Service Vehicle (4), Wait to Service Vehicle (5), Drive to Route (9), Drive on Route (10), Drive Return to Plant (30), Garage Vehicle (34), Drive to Next Van (32-11), Drive to Unload Return Goods (32-1), as defined in Appendix B of Bowman Pre-trial Order Exhibit 4.

<sup>6</sup> *Rebuttal Exhibit K-2*.

[fol. 1166]

TABLE 8-G

## Bowman Wholesale Accounts

Determination of Daily Cost Rates for Allocation to Independent and Chain Stores for March and December 1955

## G. Transportation Costs

Basis of Allocation to Customers: Volume as Measured by Point Values  
(Tables 16-A and 16-B)

| Item   | March<br>1955 | December<br>1955 |
|--|---------------|------------------|
| 1. Vehicle Expenses.....                               | \$37,184      | \$36,736         |
| 2. Route Driver Transport Time Cost <sup>1</sup> ..... | 25,099        | 23,834           |
| 3. Truck Driver's Wages.....                           | 527           | 552              |
| Truck Driver's Vacation and Benefits.....              | 67*           | 57**             |
| 4. Total Transport Cost.....                           | \$62,877      | \$61,179         |
| 5. Volume Basis Allocation:                            |               |                  |
| a. Total number points delivered.....                  | 7,222,640     | 8,258,790        |
| b. Transport cost per point.....                       | \$ .00870554  | \$ .00740774     |

Source: *Rebuttal Exhibits K (1-3)*, for data supplied by Bowman Company upon request. These data are those from which Bowman derived its estimates of average daily total delivery cost rates of \$.182 for March 1955 test and \$.185 for January 1956 test, the latter being based on December 1955 data as per Rebuttal Exhibit K-1. All data cover all three Bowman wholesale divisions: Elston, Forest, and South.

\* At \$.1289134 per dollar of salaries and wages for March 1955.

\*\* At \$.1034958 per dollar of salaries and wages for December 1955.

<sup>1</sup> Source: *Table 8-F*

TABLE 9

## Bowman Wholesale Customers:

Rebuttal Allocation of Driver Time Spent on Service and Transport Functions  
(From 1949 Time Study of Elston Division Route)

| Route Number            | Sample Day   | Total Time <sup>1</sup><br>(Each Lunch Hour) | Service Time <sup>2</sup> | Transportation Time               |                         |                       |
|-------------------------|--------------|--|---------------------------|-----------------------------------|-------------------------|-----------------------|
|                         |              |  |                           | Total<br>(Minutes per sample day) | Route Time <sup>3</sup> | At Plant <sup>4</sup> |
| 44                      | January 19   | 514.00                                       | 387.12                    | 126.88                            | 110.88                  | 16.00                 |
| 52                      | August 4     | 520.00                                       | 355.20                    | 164.80                            | 159.10                  | 5.70                  |
| 52                      | August 5     | 531.00                                       | 351.64                    | 179.36                            | 174.23                  | 5.13                  |
| 66                      | July 19      | 494.00                                       | 388.37                    | 105.63                            | 91.86                   | 13.77                 |
| 66                      | July 20      | 528.00                                       | 434.81                    | 93.19                             | 88.86                   | 4.33                  |
| 257                     | July 12      | 442.00                                       | 338.67                    | 103.33                            | 97.22                   | 6.11                  |
| 271                     | July 26      | 479.00                                       | 330.83                    | 148.17                            | 142.69                  | 5.48                  |
| 271                     | July 27      | 469.00                                       | 314.97                    | 154.03                            | 149.35                  | 4.68                  |
| 444                     | July 26      | 515.00                                       | 409.72                    | 105.28                            | 94.17                   | 11.11                 |
| 444                     | July 27      | 566.00                                       | 456.36                    | 109.64                            | 106.33                  | 3.31                  |
| 590                     | July 14      | 465.00                                       | 387.67                    | 77.33                             | 67.40                   | 9.93                  |
| 590                     | July 15      | 454.00                                       | 371.66                    | 82.34                             | 66.67                   | 15.67                 |
| 624                     | January 6    | 437.00                                       | 327.81                    | 109.19                            | 96.60                   | 12.50                 |
| 636                     | July 21      | 551.00                                       | 444.74                    | 106.26                            | 103.88                  | 2.38                  |
| 636                     | July 22      | 566.00                                       | 446.26                    | 119.74                            | 114.95                  | 4.79                  |
| 771                     | August 9     | 469.00                                       | 382.95                    | 86.05                             | 78.15                   | 7.90                  |
| 914                     | August 2     | 474.00                                       | 392.72                    | 81.28                             | 76.81                   | 4.47                  |
| 914                     | August 3     | 470.00                                       | 374.15                    | 95.85                             | 86.68                   | 9.17                  |
| 929                     | July 8       | 453.00                                       | 385.73                    | 67.27                             | 62.31                   | 4.96                  |
| 1015                    | July 5       | 462.00                                       | 372.37                    | 89.63                             | 83.92                   | 5.71                  |
| 1097                    | July 13      | 471.00                                       | 358.68                    | 112.32                            | 105.12                  | 7.20                  |
| 1148                    | July 28      | 446.00                                       | 343.59                    | 102.41                            | 99.51                   | 2.90                  |
| 1148                    | July 29      | 443.00                                       | 342.00                    | 101.00                            | 99.90                   | 1.10                  |
| 1177                    | July 28      | 527.00                                       | 434.36                    | 92.64                             | 86.01                   | 6.63                  |
| 1177                    | July 29      | 536.00                                       | 432.31                    | 103.69                            | 96.29                   | 7.40                  |
| 1475                    | July 8       | 466.00                                       | 379.96                    | 86.04                             | 76.94                   | 9.10                  |
| 1570                    | August 2     | 516.00                                       | 410.06                    | 105.94                            | 92.01                   | 13.93                 |
| 1890                    | September 11 | 489.00                                       | 396.02                    | 92.98                             | 91.74                   | 1.24                  |
| 1890                    | September 12 | 505.00                                       | 404.40                    | 100.60                            | 95.02                   | 5.58                  |
| 1891                    | July 14      | 497.00                                       | 407.00                    | 90.00                             | 83.03                   | 6.97                  |
| 1891                    | July 15      | 470.00                                       | 380.37                    | 89.63                             | 80.99                   | 8.64                  |
| 1899                    | January 10   | 505.00                                       | 374.53                    | 130.47                            | 124.07                  | 6.40                  |
| 1910                    | January 18   | 457.00                                       | 344.32                    | 112.68                            | 98.68                   | 14.00                 |
| 1949                    | January 20   | 471.00                                       | 342.66                    | 128.34                            | 125.64                  | 2.70                  |
| 2058                    | July 5       | 584.00                                       | 445.86                    | 138.14                            | 118.13                  | 20.01                 |
| 2058                    | July 6       | 565.00                                       | 412.02                    | 152.98                            | 138.86                  | 14.12                 |
| 2109                    | January 11   | 499.00                                       | 389.29                    | 109.71                            | 92.51                   | 17.20                 |
| 2120                    | July 19      | 511.00                                       | 421.62                    | 89.38                             | 87.59                   | 1.79                  |
| 2120                    | July 20      | 519.00                                       | 412.58                    | 106.42                            | 102.77                  | 3.65                  |
| 2149                    | January 12   | 502.00                                       | 380.61                    | 121.39                            | 115.99                  | 5.40                  |
| 2220                    | July 21      | 533.00                                       | 433.22                    | 99.78                             | 91.07                   | 8.71                  |
| 2220                    | July 22      | 537.00                                       | 437.85                    | 99.15                             | 87.75                   | 11.40                 |
| 2222                    | January 7    | 472.00                                       | 352.83                    | 119.17                            | 113.67                  | 5.50                  |
| Totals                  |              | 21,380.00                                    | 16,689.89                 | 4,690.11                          | 4,355.44                | 334.67                |
| Percentage of Total (%) |              | 100.00                                       | 78.0632                   | 21.9369                           | 20.3716                 | 1.5653                |

<sup>1</sup> Total work day paid time only, less one hour lunch time allowance. Excludes 12 of the 55 route studies for which the total working time was unavailable.

<sup>2</sup> Driver time spent at and in customer's establishment performing work elements plus route bookkeeping time, loading and unloading fluid milk products at plant, checking load, day's reports, and other office time.

<sup>3</sup> Driver time spent driving from plant to and between customer stops and return, including parking time on route. See Appendix B, Bowman's Pre-Trial Order (Exhibit 4).

<sup>4</sup> Driver time spent at plant getting vehicle, making it ready (loading gas, oil, etc.) for trip driving to next van and for unloading and garaging it at close of day. See Appendix B of Bowman's Pre-Trial Order (Exhibit 4).

Source: Rebuttal Bulk Exhibit 2, as furnished by Bowman upon request.

[fol. 1168]

TABLE 10A

Bowman Wholesale Customers: Rebuttal Evidence of Customer Services Performance Time at Independent Stores on 33 Elston Division Routes Number of Such Stores Receiving and Not Receiving Customer Service Number of Units\* Delivered to Stores on Sample Days in 1949 By Size Classes of Stores.

| Size Class<br>of Store<br>(No. Daily<br>Units<br>Received) | All Stores                |                             | Stores Receiving Customer Services on Sample Day |                                 |                            |                       |                                   | Calculated Average<br>No. Minutes per Unit                            |   |
|--|---------------------------|-----------------------------|--|---------------------------------|----------------------------|-----------------------|-----------------------------------|---|---|
|  | Total<br>Number<br>Stores | Total<br>Units<br>Delivered | Number<br>Stores                                 | Number<br>of Units<br>Delivered | Total<br>Number<br>Minutes | Averages              |                                   | Sample<br>Stores<br>Receiving<br>Service <sup>1</sup><br>(1/100 Min.) | Adjusted to<br>Level of<br>All Store<br>Averages <sup>2</sup><br>(1/100 Min.) |
|  |                           |                             |  |                                 |                            | Units<br>per<br>Store | Minutes<br>per Unit<br>1/100 Min. |   |   |
|  | (1)                       | (2)                         | (3)  | (4)                             | (5)                        | (6)                   | (7)                               | (8)   | (9)   |
| 1-5  | 20                        | 55                          | 5  | 11                              | 3.03                       | 2.20                  | 27.55                             | 21.66   | 13.04   |
| 5-10   | 43                        | 306                         | 16   | 119                             | 10.73                      | 7.44                  | 9.02                              | 12.50   | 7.53  |
| 10-15  | 51                        | 602                         | 33   | 394                             | 30.41                      | 11.94                 | 7.72                              | 9.86  | 5.94  |
| 15-20  | 51                        | 854                         | 30   | 511                             | 40.09                      | 17.03                 | 7.85                              | 8.59  | 5.17  |
| 20-25  | 56                        | 1240                        | 36   | 802                             | 50.05                      | 22.28                 | 6.24                              | 7.78  | 4.69  |
| 25-30  | 38                        | 1035                        | 23   | 630                             | 41.44                      | 27.39                 | 6.58                              | 7.21  | 4.34  |
| 30-35  | 40                        | 1290                        | 25   | 808                             | 40.67                      | 32.32                 | 5.03                              | 6.78  | 4.08  |
| 35-40  | 40                        | 1473                        | 19   | 698                             | 39.12                      | 36.74                 | 5.60                              | 6.43  | 3.87  |
| 40-45  | 38                        | 1597                        | 26   | 1092                            | 55.74                      | 42.00                 | 5.10                              | 6.14  | 3.70  |
| 45-50  | 44                        | 2079                        | 32   | 1511                            | 88.25                      | 47.22                 | 5.84                              | 5.90  | 3.55  |
| 50-60  | 55                        | 3006                        | 36   | 1982                            | 98.48                      | 55.06                 | 4.97                              | 5.69  | 3.43  |
| 60-70  | 40                        | 2568                        | 25   | 1609                            | 91.15                      | 64.36                 | 5.67                              | 5.35  | 3.22  |
| 70-80  | 53                        | 3956                        | 31   | 2305                            | 123.12                     | 74.35                 | 5.34                              | 5.07  | 3.05  |
| 80-90  | 32                        | 2735                        | 22   | 1874                            | 90.21                      | 85.18                 | 4.81                              | 4.85  | 2.92  |
| 90-100   | 28                        | 2651                        | 19   | 1800                            | 86.04                      | 94.74                 | 4.78                              | 4.66  | 2.81  |
| 100-120  | 42                        | 4566                        | 31   | 3392                            | 135.50                     | 109.42                | 3.99                              | 4.49  | 2.70  |
| 120-140  | 20                        | 2578                        | 16   | 2063                            | 122.33                     | 128.94                | 5.93                              | 4.22  | 2.54  |
| 140-160  | 15                        | 2205                        | 11   | 1626                            | 87.86                      | 147.82                | 5.40                              | 4.00  | 2.41  |
| 160-180  | 10                        | 1698                        | 7  | 1184                            | 42.48                      | 169.14                | 3.59                              | 3.83  | 2.31  |

[TABLE 10-A—CONTINUED ON PAGE 478]



|              |     |        |     |        |         |        |      |      |      |
|--------------|-----|--------|-----|--------|---------|--------|------|------|------|
| 180-200      | 6   | 1125   | 6   | 1125   | 67.02   | 187.50 | 5.96 | 3.67 | 2.21 |
| 200-250      | 12  | 2634   | 12  | 2634   | 74.45   | 219.50 | 2.83 | 3.54 | 2.13 |
| 250 and over | 3   | 899    | 2   | 642    | 15.05   | 321.00 | 2.34 | 3.28 | 1.98 |
| 300          | —   | —      | —   | —      | —       | —      | —    | 3.09 | 1.86 |
| 400          | —   | —      | —   | —      | —       | —      | —    | 2.80 | 1.69 |
| 500          | —   | —      | —   | —      | —       | —      | —    | 2.59 | 1.56 |
| 600          | —   | —      | —   | —      | —       | —      | —    | 2.44 | 1.47 |
| Total        | 737 | 41,152 | 463 | 28,812 | 1433.22 | 62.23  | 4.97 | 5.48 | 3.30 |
| Averages     | 22  | 55.84  | —   | —      | —       | —      | —    | —    | —    |

Source: Bowman 1949 Time Study Work Sheets on each store in 33 Elston Division Routes collectively identified as Rebuttal Bulk Exhibit 3.

<sup>1</sup> Calculated from the significant logarithmic relationship to size of store as measured by number of daily units delivered. Representing calculated values corresponding to the lower limits of the size class.

<sup>2</sup> Adjusting ratio is the ratio of the calculated average minutes per unit (5.48) for the average store (55.8 units) to Bowman's 3.30 average rate for all stores including those not receiving customer service on the sample days. By this procedure the time curve of relationship is preserved but adjusted to reflect the average time savings to the company because not all stores will necessarily receive customer service on any given day for comparability with Bowman treatment of this Customer Service data.

\* A unit is a single container.

[fol. 1169]

TABLE 10-B

Bowman Wholesale Customers: Rebuttal Evidence of Maximum Available Margins for Independent Stores Based on Rebuttal Customer Service Average Minutes Per Unit\* Rates

| Volume<br>Schedule<br>(No Daily Units<br>Delivered) | Delivery Time All Services                       |  |   |                           | Distribution Costs (Adjusted) |                   |  | Maximum<br>Available<br>Margin %<br>(1-Col. 7<br>20.5) |
|---|--|--|---|---------------------------|-------------------------------|-------------------|--|--|
|   | Total<br>Under<br>Bowman<br>Formula <sup>1</sup> | Bowman<br>Customer<br>Service<br>Time <sup>1</sup> | Correct<br>Customer<br>Service<br>Time <sup>2</sup> | Total<br>Time<br>Adjusted | Delivery Costs (¢)            |                   | Unit Costs<br>Plus 14¢<br>Platform<br>Cost |  |
|   |  |  |   |                           | Total at<br>15¢/min.          | Av. Unit<br>Costs |  |  |
|   | (1)  | (2)  | (3)   | (4)=(1)-(2)+(3)           | (5)                           | (6)               | (7)  | %  |
| 10  | 12 232   | .33  | .59   | 12 492                    | 187 38                        | 18 738            | 32 738                                     | —  |
| 20  | 12 939   | .66  | .94   | 13 219                    | 198 29                        | 9 915             | 23 915                                     | —  |
| 30  | 13 908   | .99  | 1 22  | 14 138                    | 212 07                        | 7 069             | 21 069                                     | —  |
| 40  | 15 046   | 1 32   | 1 48  | 15 206                    | 228 09                        | 5 702             | 19 702                                     | 3 89   |
| 50  | 16 167   | 1 65   | 1 72  | 16 237                    | 243 56                        | 4 871             | 18 871                                     | 7 95   |
| 60  | 17 307   | 1 98   | 1 93  | 17 257                    | 258 86                        | 4 314             | 18 314                                     | 10 66  |
| 70  | 18 443   | 2 31   | 2 14  | 18 273                    | 274 10                        | 3 916             | 17 916                                     | 12 60  |
| 80  | 19 564   | 2 64   | 2 34  | 19 264                    | 288 96                        | 3 612             | 17 612                                     | 14 09  |
| 90  | 20 703   | 2 97   | 2 53  | 20 263                    | 303 95                        | 3 377             | 17 377                                     | 15 23  |
| 100   | 21 840   | 3 30   | 2 70  | 21 240                    | 318 60                        | 3 186             | 17 186                                     | 16 17  |
| 120   | 24 100   | 3 96   | 3 05  | 23 190                    | 347 85                        | 2 899             | 16 899                                     | 17 57  |
| 140   | 26 360   | 4 62   | 3 37  | 25 110                    | 376 65                        | 2 690             | 16 690                                     | 18 59  |
| 160   | 28 636   | 5 28   | 3 70  | 27 056                    | 405 84                        | 2 537             | 16 537                                     | 19 33  |
| 180   | 30 897   | 5 94   | 3 98  | 28 937                    | 434 06                        | 2 411             | 16 411                                     | 19 95  |
| 200   | 33 154   | 6 60   | 4 26  | 30 814                    | 462 21                        | 2 311             | 16 311                                     | 20 43  |
| 250   | 38 773   | 8 25   | 4 95  | 35 473                    | 532 10                        | 2 128             | 16 128                                     | 21 33  |
| 300   | 44 392   | 9 90   | 5 58  | 40 072                    | 601 08                        | 2 004             | 16 004                                     | 21 93  |
| 400   | 54 652   | 13 20  | 6 76  | 48 212                    | 723 18                        | 1 808             | 15 808                                     | 22 89  |
| 500   | 67 017   | 16 50  | 7 80  | 58 317                    | 874 76                        | 1 750             | 15 750                                     | 23 17  |
| 600   | 78 370   | 19 80  | 8 82  | 67 390                    | 1010 85                       | 1 685             | 15 685                                     | 23 49  |

<sup>1</sup> From Schedule 2, pages 1 and 2, and Schedule 2A, page 2, of Bowman Exhibit 4.

<sup>2</sup> Col. 9 times the corresponding lower limits of volumes class in Table 10-A.

<sup>3</sup> Based on Bowman's List Price per quart of 20.5¢.

\* A unit is a single container.

|               |     |     |    |     |       |       |      |      |
|---------------|-----|-----|----|-----|-------|-------|------|------|
| 5 under 10    | 42  | 14  | 4  | 24  | 100 0 | 55.3  | 10 6 | 34 0 |
| 10 under 15   | 47  | 26  | 5  | 16  | 100 0 | 55.3  | 10 6 | 34 0 |
| 15 under 20   | 41  | 22  | 5  | 14  | 100 0 | 53.7  | 12 2 | 34.1 |
| 20 under 25   | 55  | 33  | 5  | 17  | 100 0 | 60 0  | 9 1  | 30.9 |
| 25 under 30   | 33  | 21  | 1  | 11  | 100 0 | 63 6  | 3 0  | 33.3 |
| 30 under 35   | 38  | 25  | —  | 13  | 100 0 | 65 8  | —    | 34.2 |
| 35 under 40   | 39  | 19  | 1  | 19  | 100 0 | 48 7  | 2 6  | 48.7 |
| 40 under 45   | 37  | 24  | 2  | 11  | 100 0 | 64 9  | 5 4  | 29.7 |
| 45 under 50   | 42  | 29  | 2  | 11  | 100 0 | 69 0  | 4 8  | 26.2 |
| 50 under 60   | 53  | 33  | 4  | 16  | 100 0 | 62 3  | 7 5  | 30.2 |
| 60 under 70   | 37  | 23  | 1  | 13  | 100 0 | 62 2  | 2 7  | 35.1 |
| 70 under 80   | 46  | 26  | 5  | 15  | 100 0 | 56 5  | 10 9 | 32.6 |
| 80 under 90   | 31  | 21  | —  | 10  | 100 0 | 67 7  | —    | 32.3 |
| 90 under 100  | 29  | 18  | 3  | 8   | 100 0 | 62 1  | 10 3 | 27.6 |
| 100 under 120 | 36  | 27  | 3  | 6   | 100 0 | 75 0  | 8 3  | 16.7 |
| 120 under 140 | 21  | 15  | 2  | 4   | 100 0 | 71.4  | 9 5  | 19.0 |
| 140 under 160 | 14  | 11  | —  | 3   | 100 0 | 78 6  | —    | 21.4 |
| 160 under 180 | 9   | 6   | —  | 3   | 100 0 | 66.7  | —    | 33.3 |
| 180 under 200 | 6   | 6   | —  | —   | 100 0 | 100 0 | —    | —    |
| 200 under 300 | 14  | 13  | 1  | —   | 100 0 | 92.9  | 7 1  | —    |
| 300 under 400 | 1   | 1   | —  | —   | 100 0 | 100 0 | —    | —    |
| Total         | 687 | 417 | 46 | 224 | 100 0 | 60 7  | 6 7  | 32 6 |

\* A unit is a single container.

[fol. 1171]

TABLE 12-A

Bowman Wholesale Customers: Rebuttal Evidence—Independent Stores Average Per Cent of  
in Glass Containers by Size of Store in September 1

(Based on 1-3 Sample of All Routes in Each Division: Elston, Fo

N

| Store Size<br>(Daily Points<br>Delivered) | Average Daily Points Delivered |                |                |               | Number of Stores |                |                |               | All Containers   |                |                |
|---|--------------------------------|----------------|----------------|---------------|------------------|----------------|----------------|---------------|------------------|----------------|----------------|
|   | All<br>Divisions               | Elston<br>Div. | Forest<br>Div. | South<br>Div. | All<br>Divisions | Elston<br>Div. | Forest<br>Div. | South<br>Div. | All<br>Divisions | Elston<br>Div. | Forest<br>Div. |
| 0 under 5                                 | 3 25                           | 3 54           | 2 53           | 3 29          | 27               | 14             | 6              | 7             | 87 7             | 49 5           | 15 2           |
| 5 under 10                                | 7 65                           | 7 85           | 7 33           | 7 77          | 61               | 21             | 20             | 20            | 466 6            | 164 8          | 146 5          |
| 10 under 15                               | 12 44                          | 12 33          | 12 46          | 12 56         | 60               | 24             | 20             | 16            | 746 1            | 295 9          | 249 2          |
| 15 under 20                               | 17 11                          | 17 12          | 16 78          | 17 48         | 72               | 30             | 23             | 19            | 1,231 6          | 513 5          | 386 0          |
| 20 under 25                               | 22 53                          | 22 39          | 22 48          | 22 74         | 55               | 21             | 16             | 18            | 1,239 1          | 470 2          | 359 6          |
| 25 under 30                               | 27 34                          | 27 40          | 27 21          | 27 39         | 49               | 21             | 13             | 15            | 1,339 8          | 575 3          | 353 7          |
| 30 under 35                               | 32 40                          | 32 66          | 32 53          | 31 85         | 48               | 21             | 14             | 13            | 1,555 3          | 685 9          | 455 4          |
| 35 under 40                               | 37 24                          | 37 68          | 36 60          | 37 50         | 41               | 10             | 14             | 17            | 1,526 7          | 376 8          | 512 4          |
| 40 under 45                               | 42 48                          | 42 86          | 42 27          | 42 35         | 38               | 12             | 13             | 13            | 1,614 4          | 514 3          | 549 5          |
| 45 under 50                               | 47 36                          | 47 43          | 47 23          | 47 44         | 41               | 15             | 16             | 10            | 1,941 6          | 711 5          | 755 7          |
| 50 under 60                               | 54 64                          | 54 43          | 54 91          | 54 53         | 60               | 24             | 24             | 12            | 3,278 5          | 1,306 3        | 1,317 9        |
| 60 under 70                               | 65 08                          | 64 73          | 65 50          | 65 06         | 55               | 22             | 19             | 14            | 3,579 4          | 1,424 0        | 1,244 5        |
| 70 under 80                               | 74 93                          | 74 45          | 76 05          | 74 68         | 46               | 15             | 11             | 20            | 3,446 7          | 1,116 7        | 836 5          |
| 80 under 90                               | 83 61                          | 83 13          | 84 04          | 83 50         | 26               | 7              | 10             | 9             | 2,173 8          | 581 9          | 840 4          |
| 90 under 100                              | 95 49                          | 96 34          | 94 66          | 94 47         | 33               | 17             | 10             | 6             | 3,151 1          | 1,637 7        | 946 6          |
| 100 under 120                             | 108 03                         | 108 28         | 108 04         | 107 63        | 46               | 15             | 21             | 10            | 4,969 4          | 1,624 2        | 2,268 9        |
| 120 under 140                             | 127 09                         | 128 53         | 127 58         | 125 77        | 31               | 7              | 12             | 12            | 3,939 9          | 899 7          | 1,531 0        |
| 140 under 160                             | 148 27                         | 145 92         | 147 97         | 150 77        | 15               | 6              | 3              | 6             | 2,224 0          | 875 5          | 443 9          |
| 160 under 180                             | 167 62                         | 167 00         | 170 30         | 167 40        | 12               | 8              | 2              | 2             | 2,011 4          | 1,336 0        | 340 6          |
| 180 under 200                             | 188 43                         | 189 95         | 180 60         | 189 63        | 7                | 2              | 1              | 4             | 1,349 0          | 379 9          | 180 6          |
| 200 under 400                             | 274 63                         | 282 45         | 308 30         | 276 08        | 12               | 6              | 2              | 4             | 3,295 6          | 1,574 7        | 616 6          |
| 400 and over                              | 536 38                         | 424 80         | —              | 647 95        | 4                | 2              | 0              | 2             | 2,145 5          | 849 6          | —              |
| Total & Average                           | 56 36                          | 56 14          | 53 15          | 60 11         | 839              | 320            | 270            | 249           | 47,283 2         | 17,963 9       | 14,350 7       |

TABLE 12-B

Bowman Wholesale Customers: Rebuttal Evidence—Chain Stores Average Per Cent of Total in Glass Containers by Size of Store in September 1

(Based on 1/3 Sample of All Routes in Each Division: Elston, F

N

| Store Size<br>(Daily Points<br>Delivered) | Average Daily Points Delivered |                |                |               | Number of Stores |                |                |               | All Containers   |                |                |
|---|--------------------------------|----------------|----------------|---------------|------------------|----------------|----------------|---------------|------------------|----------------|----------------|
|   | All<br>Divisions               | Elston<br>Div. | Forest<br>Div. | South<br>Div. | All<br>Divisions | Elston<br>Div. | Forest<br>Div. | South<br>Div. | All<br>Divisions | Elston<br>Div. | Forest<br>Div. |
| 0 under 80                                | —                              | —              | —              | —             | —                | —              | —              | —             | —                | —              | —              |
| 80 under 90                               | —                              | —              | —              | —             | —                | —              | —              | —             | —                | —              | —              |
| 90 under 100                              | 93.5                           | —              | —              | 93.5          | 1                | —              | —              | 1             | 93.5             | —              | —              |
| 100 under 120                             | 117.7                          | —              | —              | 117.7         | 1                | —              | —              | 1             | 117.7            | —              | —              |
| 120 under 140                             | —                              | —              | —              | —             | —                | —              | —              | —             | —                | —              | —              |
| 140 under 160                             | —                              | —              | —              | —             | —                | —              | —              | —             | —                | —              | —              |
| 160 under 180                             | 175.6                          | —              | —              | 175.6         | 1                | —              | —              | 1             | 175.6            | —              | —              |
| 180 under 200                             | 191.7                          | 186.1          | —              | 197.2         | 2                | 1              | —              | 1             | 383.3            | 186.1          | —              |
| 200 under 250                             | 220.6                          | 229.9          | —              | 201.9         | 3                | 2              | —              | 1             | 661.7            | 459.8          | —              |
| 250 under 300                             | 273.4                          | 278.5          | 264.7          | 277.5         | 9                | 2              | 3              | 4             | 2,460.8          | 556.9          | 794.1          |
| 300 under 350                             | 322.4                          | 316.9          | 328.0          | —             | 4                | 2              | 2              | —             | 1,289.6          | 633.7          | 655.9          |
| 350 under 400                             | 360.2                          | 352.4          | 360.7          | 365.9         | 8                | 3              | 1              | 4             | 2,881.5          | 1,057.1        | 360.7          |
| 400 under 450                             | 429.1                          | 426.1          | —              | 433.7         | 5                | 3              | —              | 2             | 2,145.7          | 1,278.3        | —              |
| 450 under 500                             | 459.5                          | —              | —              | 459.5         | 1                | —              | —              | 1             | 459.5            | —              | —              |
| 500 under 600                             | 539.9                          | 542.6          | 559.0          | 529.0         | 8                | 2              | 2              | 4             | 4,319.2          | 1,085.2        | 1,117.9        |
| 600 under 700                             | 656.9                          | 623.7          | —              | 676.9         | 8                | 3              | —              | 5             | 5,255.4          | 1,871.1        | —              |
| 700 under 800                             | 733.2                          | 729.6          | 753.8          | 721.8         | 7                | 2              | 2              | 3             | 5,132.2          | 1,459.2        | 1,507.5        |
| 800 under 900                             | 832.6                          | —              | 841.1          | 828.3         | 3                | —              | 1              | 2             | 2,497.7          | —              | 841.1          |
| 900 under 1000                            | 966.3                          | 988.8          | 957.4          | 952.8         | 3                | 1              | 1              | 1             | 2,899.0          | 988.8          | 957.4          |
| 1000 and over                             | 1,129.5                        | —              | 1,054.4        | 1,204.6       | 2                | —              | 1              | 1             | 2,259.0          | —              | 1,054.4        |
| Totals                                    | —                              | —              | —              | —             | 66               | 21             | 13             | 32            | 33,031.4         | 9,576.2        | 7,289.0        |
| Average                                   | 500.48                         | 456.01         | 560.69         | 505.19        | —                | —              | —              | —             | —                | —              | —              |

TABLE 12-B

Wholesale Customers: Rebuttal Evidence--Chain Stores Average Per Cent of Total Points in Fluid Milk Products Delivered in Glass Containers by Size of Store in September 1955

(Based on 1/3 Sample of All Routes in Each Division: Elston, Forest, and South)

| Number of Stores |             |            | Number Points Delivered in: |             |             |            |                  |             |             |            | Percentage Points Delivered in Glass Containers |             |             |            |
|------------------|-------------|------------|-----------------------------|-------------|-------------|------------|------------------|-------------|-------------|------------|---|-------------|-------------|------------|
|                  |             |            | All Containers              |             |             |            | Glass Containers |             |             |            |   |             |             |            |
| Elston Div.      | Forest Div. | South Div. | All Divisions               | Elston Div. | Forest Div. | South Div. | All Divisions    | Elston Div. | Forest Div. | South Div. | All Divisions                                   | Elston Div. | Forest Div. | South Div. |
| —                | —           | —          | —                           | —           | —           | —          | —                | —           | —           | —          | —   | —           | —           | —          |
| —                | —           | —          | —                           | —           | —           | —          | —                | —           | —           | —          | —   | —           | —           | —          |
| —                | —           | 1          | 93.5                        | —           | —           | 93.5       | 35.8             | —           | —           | 35.8       | 38.29   | —           | —           | 38.29      |
| —                | —           | 1          | 117.7                       | —           | —           | 117.7      | 46.0             | —           | —           | 46.0       | 39.08   | —           | —           | 39.08      |
| —                | —           | —          | —                           | —           | —           | —          | —                | —           | —           | —          | —   | —           | —           | —          |
| —                | —           | —          | —                           | —           | —           | —          | —                | —           | —           | —          | —   | —           | —           | —          |
| —                | —           | 1          | 175.6                       | —           | —           | 175.6      | 70.9             | —           | —           | 70.9       | 40.38   | —           | —           | 40.38      |
| 1                | —           | 1          | 383.3                       | 186.1       | —           | 197.2      | 46.7             | 25.0        | —           | 21.7       | 12.18   | 13.43       | —           | 11.00      |
| 2                | —           | 1          | 661.7                       | 459.8       | —           | 201.9      | 63.0             | 32.5        | —           | 30.5       | 9.52  | 7.07        | —           | 15.11      |
| 2                | 3           | 4          | 2,460.8                     | 556.9       | 794.1       | 1,109.8    | 539.4            | 111.4       | 151.6       | 276.4      | 21.92   | 20.00       | 19.09       | 24.91      |
| 2                | 2           | —          | 1,289.6                     | 633.7       | 655.9       | —          | 87.0             | 42.4        | 44.6        | —          | 6.75  | 6.69        | 6.80        | —          |
| 3                | 1           | 4          | 2,881.5                     | 1,057.1     | 360.7       | 1,463.7    | 424.3            | 67.5        | 11.6        | 345.2      | 14.72   | 6.39        | 3.22        | 23.58      |
| 3                | —           | 2          | 2,145.7                     | 1,278.3     | —           | 867.4      | 440.4            | 230.1       | —           | 210.3      | 20.52   | 18.00       | —           | 24.24      |
| —                | —           | 1          | 459.5                       | —           | —           | 459.5      | 130.0            | —           | —           | 130.0      | 28.29   | —           | —           | 28.29      |
| 2                | 2           | 4          | 4,319.2                     | 1,085.2     | 1,117.9     | 2,116.1    | 658.2            | 140.5       | 183.4       | 334.3      | 15.24   | 12.95       | 16.41       | 15.80      |
| 3                | —           | 5          | 5,255.4                     | 1,871.1     | —           | 3,384.3    | 1,004.0          | 343.0       | —           | 661.0      | 19.10   | 18.33       | —           | 19.53      |
| 2                | 2           | 3          | 5,132.2                     | 1,459.2     | 1,507.5     | 2,165.5    | 852.4            | 234.6       | 148.7       | 469.1      | 16.61   | 16.08       | 9.86        | 21.66      |
| —                | 1           | 2          | 2,497.7                     | —           | 841.1       | 1,656.6    | 628.8            | —           | 231.0       | 397.8      | 25.18   | —           | 27.46       | 24.01      |
| 1                | 1           | 1          | 2,899.0                     | 988.8       | 957.4       | 952.8      | 519.1            | 224.1       | 71.3        | 223.7      | 17.91   | 22.66       | 7.45        | 23.48      |
| —                | 1           | 1          | 2,259.0                     | —           | 1,054.4     | 1,204.6    | 494.9            | —           | 144.4       | 350.5      | 21.91   | —           | 13.69       | 29.10      |
| 21               | 13          | 32         | 33,031.4                    | 9,576.2     | 7,289.0     | 16,166.2   | 6,010.9          | 1,451.1     | 986.6       | 3,603.2    | —   | —           | —           | —          |
| —                | —           | —          | —                           | —           | —           | —          | —                | —           | —           | —          | 18.29   | 15.15       | 13.54       | 22.29      |

TABLE 12-A

Trade Customers: Rebuttal Evidence—Independent Stores Average Per Cent of Total Points of Fluid Milk Products Delivered in Glass Containers by Size of Store in September 1955

(Based on 1/3 Sample of All Routes in Each Division: Elston, Forest, and South)

| Number of Stores |             |            | Number Points Delivered in: |             |             |                  |               |             |             |            |               | Percentage Points Delivered in Glass Containers |             |            |  |
|------------------|-------------|------------|-----------------------------|-------------|-------------|------------------|---------------|-------------|-------------|------------|---------------|---|-------------|------------|--|
|                  |             |            | All Containers              |             |             | Glass Containers |               |             |             |            |               |   |             |            |  |
| Elston Div.      | Forest Div. | South Div. | All Divisions               | Elston Div. | Forest Div. | South Div.       | All Divisions | Elston Div. | Forest Div. | South Div. | All Divisions | Elston Div.                                     | Forest Div. | South Div. |  |
| 14               | 6           | 7          | 87 7                        | 49 5        | 15 2        | 23 0             | 27 5          | 14 5        | 5 6         | 7 4        | 31 36         | 29 29   | 36 84       | 32 17      |  |
| 21               | 20          | 20         | 466 6                       | 164 8       | 146 5       | 155 3            | 73 9          | 36 2        | 21 1        | 16 6       | 15 84         | 21 97   | 14 40       | 10 69      |  |
| 24               | 20          | 16         | 746 1                       | 295 9       | 249 2       | 201 0            | 53 3          | 24 5        | 8 7         | 20 1       | 7 14          | 8 28  | 3 49        | 10 00      |  |
| 30               | 23          | 19         | 1,231 6                     | 513 5       | 386 0       | 332 1            | 189 2         | 75 2        | 58 8        | 55 2       | 15 36         | 14 64   | 15 23       | 16 62      |  |
| 21               | 16          | 18         | 1,239 1                     | 470 2       | 359 6       | 409 3            | 157 4         | 59 3        | 62 5        | 35 6       | 12 70         | 12 61   | 17 38       | 8 70       |  |
| 21               | 13          | 15         | 1,339 8                     | 575 3       | 353 7       | 410 8            | 223 4         | 82 0        | 51 8        | 89 6       | 16 67         | 14 25   | 14 65       | 21 81      |  |
| 21               | 14          | 13         | 1,555 3                     | 685 9       | 455 4       | 414 0            | 337 2         | 120 8       | 105 3       | 111 1      | 21 68         | 17 61   | 23 12       | 26 84      |  |
| 10               | 14          | 17         | 1,526 7                     | 376 8       | 512 4       | 637 5            | 218 6         | 40 5        | 108 0       | 70 1       | 14 32         | 10 75   | 21 08       | 11 00      |  |
| 12               | 13          | 13         | 1,614 4                     | 514 3       | 549 5       | 550 6            | 274 8         | 79 0        | 127 6       | 68 2       | 17 02         | 15 36   | 23 22       | 12 39      |  |
| 15               | 16          | 10         | 1,941 6                     | 711 5       | 755 7       | 474 4            | 376 4         | 155 3       | 154 3       | 66 8       | 19 39         | 21 83   | 20 42       | 14 08      |  |
| 24               | 24          | 12         | 3,278 5                     | 1,306 3     | 1,317 9     | 654 3            | 810 7         | 323 5       | 318 3       | 168 9      | 24 73         | 24 76   | 24 15       | 25 81      |  |
| 22               | 19          | 14         | 3,579 4                     | 1,424 0     | 1,244 5     | 910 9            | 975 3         | 405 4       | 371 0       | 198 9      | 27 25         | 28 47   | 29 81       | 21 84      |  |
| 15               | 11          | 20         | 3,446 7                     | 1,116 7     | 836 5       | 1,493 5          | 713 9         | 257 3       | 251 1       | 205 5      | 20 71         | 23 04   | 30 02       | 13 76      |  |
| 7                | 10          | 9          | 2,173 8                     | 581 9       | 840 4       | 751 5            | 610 9         | 180 7       | 235 0       | 195 2      | 28 10         | 31 05   | 27 96       | 25 97      |  |
| 17               | 10          | 6          | 3,151 1                     | 1,637 7     | 946 6       | 566 8            | 735 8         | 399 8       | 178 5       | 157 5      | 23 35         | 24 41   | 18 86       | 27 79      |  |
| 15               | 21          | 10         | 4,960 4                     | 1,624 2     | 2,268 9     | 1,076 3          | 1,412 2       | 437 1       | 660 1       | 306 0      | 28 42         | 26 91   | 29 49       | 28 43      |  |
| 7                | 12          | 12         | 3,939 9                     | 899 7       | 1,531 0     | 1,509 2          | 1,173 1       | 335 7       | 474 8       | 362 6      | 29 77         | 37 31   | 31 01       | 24 03      |  |
| 6                | 3           | 6          | 2,224 0                     | 875 5       | 443 9       | 904 6            | 538 8         | 176 7       | 104 2       | 257 9      | 24 23         | 20 18   | 23 47       | 28 51      |  |
| 8                | 2           | 2          | 2,011 4                     | 1,336 0     | 340 6       | 334 8            | 560 7         | 416 6       | 21 3        | 122 8      | 27 88         | 31 18   | 6 25        | 36 68      |  |
| 2                | 1           | 4          | 1,319 0                     | 379 9       | 180 6       | 758 5            | 396 8         | 130 6       | 26 3        | 239 9      | 30 08         | 34 38   | 14 56       | 31 63      |  |
| 6                | 2           | 4          | 3,295 6                     | 1,574 7     | 616 6       | 1,104 3          | 967 9         | 437 5       | 154 9       | 375 5      | 29 37         | 27 78   | 25 12       | 34 00      |  |
| 2                | 0           | 2          | 2,145 5                     | 849 6       | —           | 1,295 9          | 911 4         | 401 5       | —           | 509 9      | 42 48         | 47 26   | —           | 39 35      |  |
| 320              | 270         | 249        | 47,283 2                    | 17,963 9    | 14,350 7    | 14,968 6         | 11,739 2      | 4,589 7     | 3,508 2     | 3,641 3    | 24 83         | 24 82   | 24 45       | 24 33      |  |



TABLE 14

Bowman Wholesale Customers: Rebuttal Evidence for Independents and Chains Determination of Schedules of Total Number of: Containers, Cases and Glass Containers from Total Number of Points Delivered Daily by Size of Store

(Based on 1/3 Sample of Routes of Elston, Forest and South Divisions as of Sept. 1955)

| Size of Store<br>No. of Daily<br>Points<br>(V)<br>(Col. 1) | Independents  |  |   |   |  | Chains  |  |   |  |   |
|--|---|--|---|---|--|---|--|---|--|---|
|  | Glass Containers  |  | Cases   |   |  | Glass Containers  |  | Cases   |  |   |
|  | Number of All<br>Containers<br>(N <sub>i</sub> ) <sup>1</sup><br>(Col. 2) | Ratio<br>(F <sub>i2</sub> ) <sup>2</sup><br>(Col. 3) | Number<br>N <sub>i2</sub> = N <sub>i</sub> (F <sub>i2</sub> )<br>(Col. 4) | (1 + F <sub>i2</sub> ) <sup>3</sup><br>(Col. 5) | Number<br>C <sub>i</sub> = N <sub>i</sub> (1 + F <sub>i2</sub> )<br>(Col. 6) | Number of All<br>Containers<br>(N <sub>c</sub> ) <sup>4</sup><br>(Col. 7) | Ratio<br>(F <sub>c2</sub> ) <sup>5</sup><br>(Col. 8) | Number<br>N <sub>c2</sub> = N <sub>c</sub> (F <sub>c2</sub> )<br>(Col. 9) | (1 + F <sub>c2</sub> ) <sup>6</sup><br>(Col. 10) | Number<br>C <sub>c</sub> = N <sub>c</sub> (1 + F <sub>c2</sub> )<br>(Col. 11) |
| 5  | 4.33  | .1400  | 60820   | 1.1400  | 24   | —   | —  | —   | —  | 24  |
| 10   | 8.19  | .0700  | 57330   | 1.0700  | 20568  | —   | —  | —   | —  | —   |
| 15   | 11.88   | .0450  | 53460   | 1.0450  | 36514  | —   | —  | —   | —  | —   |
| 20   | 15.48   | .0450  | 69660   | 1.0450  | 51728  | —   | —  | —   | —  | —   |
| 25   | 19.00   | .0600  | 1 14000   | 1.0600  | 67403  | —   | —  | —   | —  | —   |
| 30   | 22.47   | .0650  | 1 46055   | 1.0650  | 83917  | —   | —  | —   | —  | —   |
| 40   | 29.27   | .0800  | 2 34160   | 1.0800  | 99711  | —   | —  | —   | —  | —   |
| 50   | 35.94   | .0950  | 3 41430   | 1.0950  | 1 31715  | —   | —  | —   | —  | —   |
| 60   | 42.49   | .1050  | 4 46145   | 1.1050  | 1 63976  | 29 25   | .150   | 4 38750   | 1.1500   | 1 40156   |
| 70   | 48.96   | .1150  | 5 63040   | 1.1150  | 1 95631  | 35 39   | .149   | 5 27311   | 1.1490   | 1 69430   |
| 80   | 55.35   | .1200  | 6 64200   | 1.1200  | 2 27460  | 41 58   | .148   | 6 15384   | 1.1480   | 1 98891   |
| 90   | 61.68   | .1250  | 7 71000   | 1.1250  | 2 58300  | 47 81   | .146   | 6 98026   | 1.1460   | 2 28293   |
| 100  | 67.95   | .1300  | 8 83350   | 1.1300  | 2 89125  | 54 07   | .143   | 7 73201   | 1.1430   | 2 57508   |
| 120  | 80.35   | .1350  | 10 84725  | 1.1350  | 3 19931  | 60 37   | .140   | 8 45180   | 1.1400   | 2 86758   |
| 140  | 92.58   | .1400  | 12 96120  | 1.1400  | 3 79989  | 73 05   | .135   | 9 86175   | 1.1350   | 3 45466   |
| 160  | 104.66  | .1410  | 14 75706  | 1.1410  | 4 39755  | 85 82   | .130   | 11 15660  | 1.1300   | 4 04069   |
| 180  | 116.63  | .1420  | 16 56146  | 1.1420  | 4 97571  | 98 68   | .120   | 11 84160  | 1.1200   | 4 60507   |
| 190  | 122.57  | .1430  | 17 52751  | 1.1430  | 5 54964  | 111 61  | .110   | 12 27710  | 1.1100   | 5 16196   |
| 200  | 128.40  | .1440  | 18 50256  | 1.1440  | 5 83740  | 118 10  | .105   | 12 40050  | 1.1050   | 5 43752   |
| 225  | 143.18  | .1445  | 20 68951  | 1.1445  | 6 12469  | 124 61  | .100   | 12 46100  | 1.1000   | 5 71129   |
| 250  | 157.74  | .1450  | 22 87230  | 1.1450  | 6 82790  | 130 94  | .085   | 11 97990  | 1.0850   | 6 37166   |
| 300  | 186.51  | .1455  | 27 13721  | 1.1455  | 7 52551  | 157 35  | .075   | 11 81025  | 1.0750   | 7 04797   |
| 315  | 195.07  | .1460  | 28 48022  | 1.1460  | 8 90197  | 190 40  | .065   | 12 37600  | 1.0650   | 8 44900   |
| 330  | 203.59  | .1465  | 29 82594  | 1.1465  | 9 31459  | 200 37  | .0635  | 12 72350  | 1.0635   | 8 87890   |
| 340  | 209.25  | .1470  | 30 75975  | 1.1470  | 9 72566  | 210 35  | .0620  | 13 04170  | 1.0620   | 9 30799   |
| 350  | 214.90  | .1475  | 31 69775  | 1.1475  | 10 00041   | 217 62  | .0610  | 13 23822  | 1.0610   | 9 59409   |
| 355  | 217.72  | .1480  | 32 22256  | 1.1480  | 10 27491   | 223 70  | .0600  | 13 42200  | 1.0600   | 9 88008   |
| 375  | 228.97  | .1485  | 34 00205  | 1.1485  | 10 41427   | 227 04  | .0600  | 13 62240  | 1.0600   | 10 02760  |
| 400  | 242.96  | .1490  | 36 20104  | 1.1490  | 10 95717   | 240 43  | .0610  | 14 66623  | 1.0610   | 10 62901  |
| 450  | 270.74  | .1495  | 40 47563  | 1.1495  | 11 63171   | 257 22  | .0620  | 15 94764  | 1.0620   | 11 58199  |
| 500  | 298.27  | .1500  | 44 74050  | 1.1500  | 12 96732   | 290 93  | .0650  | 18 91045  | 1.0650   | 12 91002  |
| 550  | 325.57  | .1500  | 48 83550  | 1.1500  | 14 29210   | 324 81  | .0700  | 22 73670  | 1.0700   | 14 48111  |
| 600  | 352.68  | .1500  | 52 90200  | 1.1500  | 15 60023   | 358 85  | .0750  | 26 91375  | 1.0750   | 16 07349  |
| 700  | 406.36  | .1500  | 60 95400  | 1.1500  | 16 89925   | 393 02  | .0800  | 31 44160  | 1.0800   | 17 68590  |
| 800  | 459.42  | .1500  | 68 91300  | 1.1500  | 19 47142   | 461 76  | .0850  | 39 24960  | 1.0850   | 20 87540  |
| 900  | 511.94  | .1500  | 76 79100  | 1.1500  | 22 01388   | 530 94  | .090   | 47 78460  | 1.0900   | 24 11353  |
| 1000   | 564.00  | .1500  | 84 60000  | 1.1500  | 27 02500   | 600 53  | .095   | 57 05035  | 1.0950   | 27 39918  |
| 1100   | 615.63  | .1500  | 92 34450  | 1.1500  | 29 49894   | 670 46  | .100   | 67 04600  | 1.1000   | 30 72942  |
| 1200   | 666.88  | .1500  | 100 03200   | 1.1500  | 31 95467   | 740 72  | .100   | 74 07200  | 1.1000   | 33 94967  |
|  |   |  |   |   |  | 811 27  | .100   | 81 12700  | 1.1000   | 37 18321  |

<sup>1</sup> From estimating equation of Chart III-A:  $N_i = (.986364) V^{(.919080)}$ .

<sup>2</sup> From estimating curve of Chart IV for each level of volume (V) for Independents.

<sup>3</sup> Where (F<sub>i2</sub>) is the ratio of Glass Containers to All Containers for same volume for Independents.

<sup>4</sup> From estimating equation of Chart III-B:  $N_c = (.4894) V^{(.943591)}$ .

<sup>5</sup> From estimating curve of Chart IV for each level of volume (V) for Chains.

<sup>6</sup> (F<sub>c2</sub>) is ratio of Glass Containers to All Containers for same volume for Chains.

[fol. 1176]

TABLE 15

Bowman Wholesale Customers: Rebuttal Allocation—Driver Service Time and Cost Between Independents and Chains by Size of Store as of March 1955 and December 1955

(Based on Bowman 1949 Time Studies, and 1/3 Route Sample of Container Data—Sept. 1955)

| Store Size | Independents                 |                                      | Chains                       |                                      | Driver Service Time Schedules (Daily Minutes per Customer of Stated Size) |   |                                    |                                     |                          |                              |                                    |                          |                          |         | Driver Daily Service Cost <sup>11</sup> |         |       |  |
|------------|------------------------------|--------------------------------------|------------------------------|--------------------------------------|---|---|------------------------------------|-------------------------------------|--------------------------|------------------------------|------------------------------------|--------------------------|--------------------------|---------|---|---------|-------|--|
|            | Number of Cases <sup>1</sup> | Number Glass Containers <sup>1</sup> | Number of Cases <sup>2</sup> | Number Glass Containers <sup>2</sup> | Work Elements at Constant Rate per Customer <sup>3</sup>                  | Work Elements for Independents <sup>6</sup> at: |                                    |                                     |                          | Work Elements for Chains at: |                                    |                          | March 1955 <sup>12</sup> |         | December 1955 <sup>12</sup>             |         |       |  |
|            |                              |                                      |                              |                                      |   | Per Case Rates <sup>4</sup>                     | Glass Container Rates <sup>5</sup> | Customer Service Rates <sup>7</sup> | Total Time <sup>10</sup> | Per Case Rates <sup>4</sup>  | Glass Container Rates <sup>5</sup> | Total Time <sup>10</sup> | Inde-<br>pendent         | Chain   | Inde-<br>pendent                        | Chain   |       |  |
| 10         | 36514                        | 57330                                | —                            | —                                    | 4 4400  | 2 0547  | 0143                               | 5205                                | 7 0295                   | —                            | —                                  | —                        | —                        | 33011   | —                                       | 32857   | —     |  |
| 20         | 67403                        | 69660                                | —                            | —                                    | 4 4400  | 2 6509  | 0174                               | 7917                                | 7 9000                   | —                            | —                                  | —                        | —                        | 37099   | —                                       | 36925   | —     |  |
| 25         | 83917                        | 1 14000                              | —                            | —                                    | 4 4400  | 2 9096  | 0285                               | 9062                                | 8 3443                   | —                            | —                                  | —                        | —                        | 39186   | —                                       | 39002   | —     |  |
| 30         | 99711                        | 1 40055                              | —                            | —                                    | 4 4400  | 3 2744  | 0365                               | 1 0119                              | 8 7628                   | —                            | —                                  | —                        | —                        | 41151   | —                                       | 40958   | —     |  |
| 40         | 1 31715                      | 2 34160                              | —                            | —                                    | 4 4400  | 3 8921  | 0585                               | 1 2043                              | 9 5949                   | —                            | —                                  | —                        | —                        | 45059   | —                                       | 44848   | —     |  |
| 50         | 1 63976                      | 3 41430                              | 1 40156                      | 4 38750                              | 4 4400  | 4 5147  | 0854                               | 1 3784                              | 10 4185                  | 4 0550                       | 1097                               | 8 6047                   | —                        | 48926   | 40409                                   | 48697   | 40219 |  |
| 60         | 1 95631                      | 4 46145                              | 1 69430                      | 5 27311                              | 4 4400  | 5 1257  | 1115                               | 1 5392                              | 11 2164                  | 4 6200                       | 1318                               | 9 1918                   | —                        | 52673   | 43166                                   | 52427   | 42963 |  |
| 70         | 2 27400                      | 5 63040                              | 1 99891                      | 6 15384                              | 4 4400  | 5 7400  | 1408                               | 1 6896                              | 12 0104                  | 5 1886                       | 1538                               | 9 7824                   | —                        | 56402   | 45039                                   | 56138   | 45724 |  |
| 80         | 2 58300                      | 6 64200                              | 2 28203                      | 6 98026                              | 4 4400  | 6 3352  | 1661                               | 1 8318                              | 12 7731                  | 5 7561                       | 1745                               | 10 3706                  | —                        | 59984   | 48701                                   | 59703   | 48473 |  |
| 90         | 2 89125                      | 7 71000                              | 2 57508                      | 7 73201                              | 4 4400  | 6 9301  | 1928                               | 1 9671                              | 13 5300                  | 6 3199                       | 1933                               | 10 9532                  | —                        | 63538   | 51437                                   | 63241   | 51196 |  |
| 100        | 3 19931                      | 8 83350                              | 2 86758                      | 8 45180                              | 4 4400  | 7 5247  | 2208                               | 2 0906                              | 14 2821                  | 6 8844                       | 2113                               | 11 5357                  | —                        | 67070   | 54173                                   | 66756   | 53919 |  |
| 120        | 3 79989                      | 10 84725                             | 3 45466                      | 9 86175                              | 4 4400  | 8 6838  | 2712                               | 2 3412                              | 15 7362                  | 8 0175                       | 2465                               | 12 7040                  | —                        | 73899   | 59659                                   | 73553   | 59380 |  |
| 140        | 4 39755                      | 12 96120                             | 4 04069                      | 11 15660                             | 4 4400  | 9 8373  | 3240                               | 2 5201                              | 17 1714                  | 9 1485                       | 2789                               | 13 8674                  | —                        | 80639   | 65123                                   | 80261   | 64818 |  |
| 160        | 4 97571                      | 14 75706                             | 4 60507                      | 11 84100                             | 4 4400  | 10 9531   | 3689                               | 2 7863                              | 18 5483                  | 10 2378                      | 2960                               | 14 9738                  | —                        | 87105   | 70318                                   | 86697   | 69989 |  |
| 180        | 5 54964                      | 16 56146                             | 5 16196                      | 12 27710                             | 4 4400  | 12 0608   | 4140                               | 2 9922                              | 19 9070                  | 11 3126                      | 3069                               | 16 0595                  | —                        | 93485   | 75417                                   | 93047   | 75064 |  |
| 190        | 5 83740                      | 17 52751                             | 5 43752                      | 12 40050                             | 4 4400  | 12 6162   | 4382                               | 3 0917                              | 20 5861                  | 11 8444                      | 3100                               | 16 5944                  | —                        | 96674   | 77929                                   | 96221   | 77564 |  |
| 200        | 6 12460                      | 18 50256                             | 5 71129                      | 12 46100                             | 4 4400  | 13 1707   | 4626                               | 3 1891                              | 21 2624                  | 12 3728                      | 3115                               | 17 1243                  | —                        | 99850   | 80417                                   | 99383   | 80041 |  |
| 225        | 6 82790                      | 20 68051                             | 6 37166                      | 11 97990                             | 4 4400  | 14 5278   | 5172                               | 3 4247                              | 22 9097                  | 13 6473                      | 2995                               | 18 3868                  | 1 07586                  | 86346   | 1 07082                                 | 85942   |       |  |
| 250        | 7 52551                      | 22 87230                             | 7 04797                      | 11 80125                             | 4 4400  | 15 8742   | 5718                               | 3 6502                              | 24 5362                  | 11 9526                      | 2950                               | 19 6876                  | 1 15224                  | 92455   | 1 14685                                 | 92022   |       |  |
| 300        | 8 90197                      | 27 13721                             | 8 44900                      | 12 37600                             | 4 4400  | 18 5308   | 6784                               | 4 0759                              | 27 7251                  | 17 6566                      | 3094                               | 22 4060                  | 1 30200                  | 1 05221 | 1 29590                                 | 1 04728 |       |  |
| 315        | 9 31459                      | 28 48022                             | 8 87890                      | 12 72350                             | 4 4400  | 19 3272   | 7120                               | 4 1980                              | 28 6772                  | 18 4863                      | 3181                               | 23 2444                  | 1 34671                  | 1 09158 | 1 34040                                 | 1 08647 |       |  |
| 330        | 9 72596                      | 29 82594                             | 9 30799                      | 13 04170                             | 4 4400  | 20 1205   | 7456                               | 4 3179                              | 29 6240                  | 19 3144                      | 3260                               | 24 0804                  | 1 39117                  | 1 13084 | 1 38466                                 | 1 12554 |       |  |
| 340        | 10 00041                     | 30 75975                             | 9 59400                      | 13 23822                             | 4 4400  | 20 6508   | 7690                               | 4 3906                              | 30 2564                  | 19 8666                      | 3310                               | 24 6376                  | 1 43087                  | 1 15701 | 1 41421                                 | 1 15159 |       |  |
| 350        | 10 27491                     | 31 69775                             | 9 88008                      | 13 42200                             | 4 4400  | 21 1896   | 7924                               | 4 4744                              | 30 8874                  | 20 4186                      | 3356                               | 25 1942                  | 1 45050                  | 1 18314 | 1 44371                                 | 1 17760 |       |  |
| 355        | 10 41427                     | 32 22256                             | 10 02760                     | 13 62240                             | 4 4400  | 21 4495   | 8056                               | 4 5129                              | 31 2080                  | 20 7033                      | 3406                               | 25 4839                  | 1 46556                  | 1 19675 | 1 45869                                 | 1 19114 |       |  |
| 375        | 10 95717                     | 34 00205                             | 10 62901                     | 14 06623                             | 4 4400  | 22 4973   | 8501                               | 4 6651                              | 32 4525                  | 21 8640                      | 3667                               | 26 6707                  | 1 52400                  | 1 25248 | 1 51686                                 | 1 24662 |       |  |
| 400        | 11 63171                     | 36 20104                             | 11 38199                     | 15 94764                             | 4 4400  | 23 7992   | 9050                               | 4 8509                              | 33 9951                  | 23 3172                      | 3987                               | 28 1559                  | 1 59644                  | 1 32223 | 1 58896                                 | 1 31603 |       |  |
| 450        | 12 96732                     | 40 47563                             | 12 91002                     | 18 91045                             | 4 4400  | 26 3766   | 1 0119                             | 5 2092                              | 37 0380                  | 26 2663                      | 4728                               | 31 1791                  | 1 73934                  | 1 46420 | 1 73119                                 | 1 15734 |       |  |
| 500        | 14 29210                     | 44 74050                             | 14 48111                     | 22 73670                             | 4 4400  | 28 9338   | 1 1185                             | 5 5521                              | 40 0444                  | 29 2985                      | 5684                               | 34 3069                  | 1 88053                  | 1 61109 | 1 87172                                 | 1 60354 |       |  |
| 550        | 15 60023                     | 48 83550                             | 16 07340                     | 26 91375                             | 4 4400  | 31 4584   | 1 2209                             | 5 8817                              | 43 0010                  | 32 5718                      | 6728                               | 37 4846                  | 2 01937                  | 1 76031 | 2 00691                                 | 1 75207 |       |  |
| 600        | 16 89925                     | 52 90200                             | 17 68590                     | 31 44160                             | 4 4400  | 33 9656   | 1 3226                             | 6 1997                              | 45 9279                  | 35 4838                      | 7860                               | 40 7098                  | 2 15682                  | 1 91177 | 2 14672                                 | 1 90282 |       |  |
| 700        | 19 47142                     | 60 95400                             | 20 87540                     | 39 24900                             | 4 4400  | 38 9298   | 1 5239                             | 6 8058                              | 51 6995                  | 41 6395                      | 9812                               | 47 0907                  | 2 42786                  | 2 21002 | 2 41649                                 | 2 19066 |       |  |
| 800        | 22 01388                     | 68 91300                             | 24 11353                     | 47 78400                             | 4 4400  | 43 8368   | 1 7228                             | 7 3785                              | 57 3781                  | 47 8891                      | 1 1946                             | 53 5237                  | 2 69453                  | 2 51353 | 2 68191                                 | 2 50175 |       |  |
| 900        | 24 53046                     | 76 79100                             | 27 39918                     | 57 05035                             | 4 4400  | 48 6938   | 1 9198                             | 7 9236                              | 62 9772                  | 54 2304                      | 1 4263                             | 60 0967                  | 2 95747                  | 2 82220 | 2 94362                                 | 2 80898 |       |  |
| 1000       | 27 02500                     | 84 60000                             | 30 72942                     | 67 04600                             | 4 4400  | 53 5083   | 2 1150                             | 8 4452                              | 68 5085                  | 60 6578                      | 1 6762                             | 66 7740                  | 3 21723                  | 3 13577 | 3 20216                                 | 3 12108 |       |  |
| 1100       | 29 49894                     | 92 34450                             | 33 94967                     | 74 07200                             | 4 4400  | 58 2830   | 2 3086                             | 8 9465                              | 73 9781                  | 66 8729                      | 1 8518                             | 73 1647                  | 3 47409                  | 3 43589 | 3 45781                                 | 3 11179 |       |  |
| 1200       | 31 95467                     | 100 03200                            | 37 18321                     | 81 12700                             | 4 4400  | 63 0225   | 2 5008                             | 9 4302                              | 79 3935                  | 73 1136                      | 2 0281                             | 79 5818                  | 3 72840                  | 3 73724 | 3 71093                                 | 3 71973 |       |  |

<sup>1</sup> From Table 14, Col. 6.<sup>2</sup> From Table 14, Col. 4.<sup>3</sup> From Table 14, Col. 11.<sup>4</sup> From Table 14, Col. 9.<sup>5</sup> Combined minutes per customer for work elements: *Get Order* (1.37), *Delay to Get Order* (.11), *Make Out Delivery Slip* (2.14), *Check Slip* (.19), and *Route Bookkeeping* (.63); these are common equally to both classes of customers as per Appendix A, Exhibit 4 of Bowman's defensive pre-trial order.<sup>6</sup> Combined minutes per Case (1.35+1.93 Min/Case) of Driver Work Elements: *Unload, Deliver to Store, Load Empties, Rearrange Load, Load and Unload Cases at Plant, Pick Up Empties, and Select Merchandise*, as per Appendix A, Exhibit 4 of Bowman's defensive pre-trial order.<sup>7</sup> Driver work element: Sort Glass Bottles @ .025 Min/Bottle from Bowman time study 1949. (Bowman Exhibit 4.)<sup>8</sup> Derived from formula based on 1949 Elston Division 33 route sample data from independent stores:  $M_i/1304 N_i^{.0016}$ ; where  $M_i$  equals total number of customer service minutes for total number of containers ( $N_i$ ) delivered to Independents, as applied to Column 2 of Table 14.<sup>9</sup> Excludes Driver time spent on "Collection" and "Delay to Collect" from Independents for comparability with cost of billing and collection from Chains omitted by Bowman and which is unavailable.<sup>10</sup> Vehicle Operating Time is omitted, the Driver Cost of which is allocated in the Transportation Function.<sup>11</sup> Costs are respectively as of March 1955 and December 1955 and refer only to that portion of Driver's Wages (including Vacation and Benefit Costs) allocated to Service Function, but omitting that portion chargeable to Driver Collecting and Delay to Collect from Independents since the corresponding unavailable billing and collection costs to Chains also are omitted by Bowman.<sup>12</sup> At \$.046061 per minute for March 1955 and \$.046741 per minute for December 1955 as calculated in Table 8 F.

[fol. 1177]

TABLE 16-A

Bowman Wholesale Customers: Summary of Rebuttal Delivery Cost Allocation Between Independents and Chains by Cost Elements and Size of Customers for Average Daily Costs in March 1955<sup>1</sup>  
(Based on Bowman Time Studies of 1949 and Supplementary 1/3 Route Sample data of Sept. 1955)

| Size of Store<br>(Points<br>Delivered<br>Daily) | Miscellaneous<br>Divisional<br>Expenses <sup>2</sup> | Divisional<br>Offices<br>Personnel<br>Wages and<br>Salaries <sup>3</sup> | Bottle Expenses <sup>4</sup> |         | Milk Room Wages <sup>4</sup> |         | Drivers'<br>Com-<br>missions <sup>4</sup> | Drivers' Service<br>Costs <sup>7</sup> |         | Trans-<br>portation<br>Costs <sup>8</sup> | Total Daily Costs<br>per Store |          | Daily Unit Costs<br>per Store <sup>9</sup> |        |
|---|--|--|------------------------------|---------|------------------------------|---------|---|--|---------|---|--------------------------------|----------|--|--------|
|   |  |  | Inde-<br>pendents            | Chains  | Inde-<br>pendents            | Chains  |   | Inde-<br>pendents                      | Chains  |   | Inde-<br>pendents              | Chains   | Inde-<br>pendents                          | Chains |
|   | \$   | \$   | \$                           | \$      | \$                           | \$      | \$  | \$                                     | \$      | \$  | \$                             | \$       | \$   | \$     |
| 10  | 32989  | 21371  | 01486                        | —       | 08451                        | —       | 06104                                     | 33011                                  | —       | 08706                                     | 1.12118                        | —        | 112118                                     | —      |
| 20  | 32989  | 21371  | 01806                        | —       | 15600                        | —       | 12208                                     | 37099                                  | —       | 17411                                     | 1.38484                        | —        | 069242                                     | —      |
| 30  | 32989  | 21371  | 03786                        | —       | 23077                        | —       | 18312                                     | 41151                                  | —       | 26117                                     | 1.66803                        | —        | 055601                                     | —      |
| 40  | 32989  | 21371  | 06069                        | —       | 30484                        | —       | 24416                                     | 45059                                  | —       | 34822                                     | 1.95210                        | —        | 048803                                     | —      |
| 50  | 32989  | 21371  | 08850                        | 11373   | 37950                        | 32437   | 30520                                     | 48926                                  | 40409   | 43528                                     | 2.24134                        | 2.12627  | 044827                                     | 042525 |
| 60  | 32989  | 21371  | 11564                        | 13668   | 45276                        | 39212   | 36621                                     | 52673                                  | 43166   | 52233                                     | 2.52730                        | 2.39263  | 042122                                     | 039877 |
| 70  | 32989  | 21371  | 14594                        | 15951   | 52643                        | 46031   | 42728                                     | 56402                                  | 45939   | 60939                                     | 2.81666                        | 2.65948  | 040238                                     | 037993 |
| 80  | 32989  | 21371  | 17216                        | 18093   | 59780                        | 52835   | 48832                                     | 59984                                  | 48701   | 69644                                     | 3.09816                        | 2.92465  | 038727                                     | 036558 |
| 90  | 32989  | 21371  | 19985                        | 20042   | 66914                        | 59597   | 54936                                     | 63538                                  | 51437   | 78350                                     | 3.38083                        | 3.18722  | 037565                                     | 035414 |
| 100   | 32989  | 21371  | 22897                        | 21907   | 74044                        | 66366   | 61040                                     | 67070                                  | 54173   | 87055                                     | 3.66466                        | 3.44901  | 036647                                     | 034490 |
| 120   | 32989  | 21371  | 28116                        | 25562   | 87944                        | 79954   | 73248                                     | 73899                                  | 59659   | 1.04466                                   | 4.22033                        | 3.97249  | 035170                                     | 033104 |
| 140   | 32989  | 21371  | 33596                        | 28918   | 1.01776                      | 93517   | 85456                                     | 80639                                  | 65123   | 1.21878                                   | 4.77705                        | 4.49252  | 034122                                     | 032090 |
| 160   | 32989  | 21371  | 38251                        | 30694   | 1.15156                      | 1.06578 | 97664                                     | 87105                                  | 70318   | 1.39289                                   | 5.31825                        | 4.98903  | 033239                                     | 031181 |
| 180   | 32989  | 21371  | 42928                        | 31823   | 1.28439                      | 1.19467 | 1.09872                                   | 93485                                  | 75417   | 1.56700                                   | 5.85784                        | 5.47639  | 032544                                     | 030424 |
| 200   | 32989  | 21371  | 47959                        | 32299   | 1.41748                      | 1.32180 | 1.22080                                   | 99850                                  | 80417   | 1.74110                                   | 6.40109                        | 5.95446  | 032005                                     | 029772 |
| 225   | 32989  | 21371  | 53628                        | 31052   | 1.58023                      | 1.47464 | 1.37340                                   | 1.07586                                | 86346   | 1.95875                                   | 7.06812                        | 6.52437  | 031414                                     | 028997 |
| 250   | 32989  | 21371  | 59286                        | 30589   | 1.74168                      | 1.63116 | 1.52600                                   | 1.15224                                | 92455   | 2.17639                                   | 7.73277                        | 7.10759  | 030931                                     | 028430 |
| 300   | 32989  | 21371  | 70340                        | 32079   | 2.06025                      | 1.95541 | 1.83120                                   | 1.30200                                | 1.05221 | 2.61166                                   | 9.05211                        | 8.31487  | 030174                                     | 027716 |
| 350   | 32989  | 21371  | 82162                        | 34790   | 2.37799                      | 2.28662 | 2.13640                                   | 1.45050                                | 1.18314 | 3.04694                                   | 10.37705                       | 9.54460  | 029649                                     | 027270 |
| 400   | 32989  | 21371  | 93834                        | 41337   | 2.69201                      | 2.63421 | 2.44160                                   | 1.59644                                | 1.32223 | 3.48222                                   | 11.69421                       | 10.83723 | 029236                                     | 027093 |
| 500   | 32989  | 21371  | 1.15969                      | 58934   | 3.30772                      | 3.35146 | 3.05200                                   | 1.88053                                | 1.61100 | 4.35277                                   | 14.29631                       | 13.50017 | 028593                                     | 027000 |
| 600   | 32989  | 21371  | 1.37124                      | 81498   | 3.91111                      | 4.09317 | 3.66240                                   | 2.15682                                | 1.91177 | 5.22332                                   | 16.86849                       | 16.24924 | 028114                                     | 027082 |
| 700   | 32989  | 21371  | 1.57995                      | 1.01736 | 4.50641                      | 4.83134 | 4.27280                                   | 2.42786                                | 2.21002 | 6.09388                                   | 19.42450                       | 18.96900 | 027749                                     | 027099 |
| 800   | 32989  | 21371  | 1.78625                      | 1.23859 | 5.09483                      | 5.58076 | 4.88320                                   | 2.69453                                | 2.51353 | 6.96443                                   | 21.96684                       | 21.72411 | 027459                                     | 027155 |
| 900   | 32989  | 21371  | 1.99045                      | 1.47876 | 5.67726                      | 6.34118 | 5.49360                                   | 2.95747                                | 2.82220 | 7.83499                                   | 24.49237                       | 24.51433 | 027219                                     | 027238 |
| 1000  | 32989  | 21371  | 2.19286                      | 1.73785 | 6.25458                      | 7.11192 | 6.10400                                   | 3.21723                                | 3.13577 | 8.70554                                   | 27.01781                       | 27.33868 | 027018                                     | 027339 |
| 1100  | 32989  | 21371  | 2.39360                      | 1.91997 | 6.82715                      | 7.85721 | 6.71440                                   | 3.47409                                | 3.43589 | 9.57609                                   | 29.52893                       | 30.04716 | 026844                                     | 027316 |
| 1200  | 32989  | 21371  | 2.59286                      | 2.10284 | 7.39549                      | 8.60557 | 7.32480                                   | 3.72840                                | 3.73724 | 10.44665                                  | 32.03180                       | 32.76070 | 026693                                     | 027301 |

<sup>1</sup> Omit Solicitors Wages for comparable omission of cost of solicitations and maintaining Chain Store accounts by Bowman.

<sup>2</sup> From Bowman Cost Schedule in Rebuttal Exhibit K-3 for March 1955 @ \$.32989 per customer per day, as calculated on Table 8-A.

<sup>3</sup> From Bowman Cost Schedule in Rebuttal Exhibit K-3 for March 1955 @ \$.213709 per customer per day, as calculated on Table 8-B for lack of a more appropriate time study. Includes prorated Vacation Benefits costs.

<sup>4</sup> Derived from cost rate in Table 8-C applied to the respective Number of Glass Containers in Table 14.

<sup>5</sup> Derived from cost rate in Table 8-D applied to the respective Number of Cases in Table 14.

<sup>6</sup> Derived from cost rate in Table 8-E applied to the Number of Points in Col. 1.

<sup>7</sup> From Table 15.

<sup>8</sup> Derived from cost rate in Table 8-G applied to the Number of Points in Col. 1.

<sup>9</sup> Average cost per point delivered daily.



[col. 1178]

Table 16-B

Bowman Wholesale Customers: Summary of Rebuttal Delivery Cost Allocation Between Independents and Chains by Cost Elements and Size of Customers for Average Daily Costs in December 1955<sup>1</sup>

| Size of Store<br>(Points<br>Delivered<br>Daily) | Miscellaneous<br>Divisional<br>Expenses <sup>2</sup> | Divisional<br>Offices<br>Personnel<br>Wages and<br>Salaries <sup>3</sup> | (Based on Bowman Time Studies of 1949 and Supplementary 1/3 Route Sample data of Sept. 1955) |         |                              |         |   |  |         |   |                   |          |                   |         | Total Daily Costs<br>per Store |        | Daily Unit Costs<br>per Store <sup>5</sup> |  |
|---|--|--|--|---------|------------------------------|---------|---|--|---------|---|-------------------|----------|-------------------|---------|--------------------------------|--------|--|--|
|   |  |  | Bottle Expense <sup>4</sup>  |         | Milk Room Wages <sup>4</sup> |         | Driver's<br>Com-<br>missions <sup>4</sup> | Driver's Service<br>Costs <sup>7</sup> |         | Trans-<br>portation<br>Costs <sup>8</sup> |                   |          | Inde-<br>pendents | Chains  | Inde-<br>pendents              | Chains |  |  |
|   |  |  | Inde-<br>pendents  | Chains  | Inde-<br>pendents            | Chains  |   | Inde-<br>pendents                      | Chains  |   | Inde-<br>pendents | Chains   |                   |         |                                |        |  |  |
|   | \$   | \$   | \$   | \$      | \$                           | \$      | \$  | \$                                     | \$      | \$  | \$                | \$       | \$                | \$      | \$                             | \$     |  |  |
| 25  | 30522  | .22247   | -.00071  | —       | .16194                       | —       | .14313                                    | .39002                                 | —       | .18519                                    | 1.40726           | —        | .056290           | —       |                                |        |  |  |
| 30  | 30522  | .22247   | -.00091  | —       | .19242                       | —       | .17175                                    | .40958                                 | —       | .22223                                    | 1.52276           | —        | .050759           | —       |                                |        |  |  |
| 40  | 30522  | .22247   | -.00147  | —       | .25417                       | —       | .22900                                    | .44848                                 | —       | .29631                                    | 1.75418           | —        | .043855           | —       |                                |        |  |  |
| 50  | 30522  | .22247   | -.00214  | -.00275 | .31643                       | .27046  | .28625                                    | .48697                                 | .40219  | .37039                                    | 1.98559           | 1.85423  | .039712           | .037085 |                                |        |  |  |
| 60  | 30522  | .22247   | -.00279  | -.00330 | .37752                       | .32695  | .34350                                    | .52427                                 | .42963  | .44446                                    | 2.21465           | 2.06893  | .036911           | .034482 |                                |        |  |  |
| 70  | 30522  | .22247   | -.00352  | -.00385 | .43894                       | .38381  | .40075                                    | .56138                                 | .45724  | .51854                                    | 2.44378           | 2.28418  | .034911           | .032631 |                                |        |  |  |
| 80  | 30522  | .22247   | -.00416  | -.00437 | .49845                       | .44054  | .45800                                    | .59703                                 | .48473  | .59262                                    | 2.66963           | 2.49921  | .033370           | .031240 |                                |        |  |  |
| 90  | 30522  | .22247   | -.00483  | -.00484 | .55793                       | .49692  | .51525                                    | .63241                                 | .51196  | .66670                                    | 2.89515           | 2.71368  | .032168           | .030152 |                                |        |  |  |
| 100   | 30522  | .22247   | -.00553  | -.00529 | .61738                       | .55337  | .57250                                    | .66756                                 | .53919  | .74077                                    | 3.12037           | 2.92823  | .031204           | .029282 |                                |        |  |  |
| 120   | 30522  | .22247   | -.00679  | -.00617 | .73328                       | .66666  | .68700                                    | .73553                                 | .59380  | .88893                                    | 3.56564           | 3.35791  | .029714           | .027983 |                                |        |  |  |
| 140   | 30522  | .22247   | -.00811  | -.00698 | .84861                       | .77974  | .80150                                    | .80261                                 | .64818  | 1.03708                                   | 4.00938           | 3.78721  | .028638           | .027052 |                                |        |  |  |
| 160   | 30522  | .22247   | -.00924  | -.00741 | .96018                       | .88865  | .91600                                    | .86697                                 | .69989  | 1.18524                                   | 4.44684           | 4.21006  | .027793           | .026313 |                                |        |  |  |
| 180   | 30522  | .22247   | -.01037  | -.00769 | 1.07093                      | .99612  | 1.03050                                   | .93047                                 | .75064  | 1.33339                                   | 4.88261           | 4.63065  | .027126           | .025726 |                                |        |  |  |
| 190   | 30522  | .22247   | -.01097  | -.00776 | 1.12646                      | 1.04929 | 1.08775                                   | .96221                                 | .77564  | 1.40747                                   | 5.10061           | 4.84008  | .026845           | .025474 |                                |        |  |  |
| 200   | 30522  | .22247   | -.01158  | -.00780 | 1.18190                      | 1.10212 | 1.14500                                   | .99383                                 | .80041  | 1.48155                                   | 5.31839           | 5.04897  | .026592           | .025245 |                                |        |  |  |
| 225   | 30522  | .22247   | -.01295  | -.00750 | 1.31760                      | 1.22956 | 1.28843                                   | 1.07082                                | .85942  | 1.66674                                   | 5.85803           | 5.56404  | .026036           | .024729 |                                |        |  |  |
| 250   | 30522  | .22247   | -.01432  | -.00739 | 1.45222                      | 1.36007 | 1.43123                                   | 1.14685                                | .92022  | 1.85194                                   | 6.39563           | 6.08378  | .025583           | .024335 |                                |        |  |  |
| 300   | 30522  | .22247   | -.01699  | -.00775 | 1.71784                      | 1.63043 | 1.71750                                   | 1.29590                                | 1.04728 | 2.22232                                   | 7.46426           | 7.13747  | .024881           | .023792 |                                |        |  |  |
| 315   | 30522  | .22247   | -.01783  | -.00796 | 1.79746                      | 1.71339 | 1.80338                                   | 1.34040                                | 1.08647 | 2.33344                                   | 7.78454           | 7.45641  | .024713           | .023671 |                                |        |  |  |
| 330   | 30522  | .22247   | -.01867  | -.00816 | 1.87679                      | 1.79619 | 1.88925                                   | 1.38466                                | 1.12554 | 2.44455                                   | 8.10427           | 7.77506  | .024558           | .023561 |                                |        |  |  |
| 340   | 30522  | .22247   | -.01926  | -.00829 | 1.92981                      | 1.85140 | 1.94650                                   | 1.41421                                | 1.15159 | 2.51863                                   | 8.31758           | 7.98752  | .024463           | .023493 |                                |        |  |  |
| 350   | 30522  | .22247   | -.01984  | -.00840 | 1.98278                      | 1.90659 | 2.00375                                   | 1.44371                                | 1.17760 | 2.59271                                   | 8.53080           | 8.19994  | .024374           | .023428 |                                |        |  |  |
| 355   | 30522  | .22247   | -.02017  | -.00853 | 2.00967                      | 1.93506 | 2.03238                                   | 1.45869                                | 1.19114 | 2.62975                                   | 8.63801           | 8.30749  | .024332           | .023401 |                                |        |  |  |
| 375   | 30522  | .22247   | -.02129  | -.00918 | 2.11444                      | 2.05111 | 2.14688                                   | 1.51686                                | 1.24662 | 2.77790                                   | 9.06248           | 8.74102  | .024167           | .023309 |                                |        |  |  |
| 400   | 30522  | .22247   | -.02266  | -.00998 | 2.24461                      | 2.19642 | 2.29000                                   | 1.58896                                | 1.31603 | 2.96310                                   | 9.59170           | 9.28326  | .023979           | .023208 |                                |        |  |  |
| 450   | 30522  | .22247   | -.02534  | -.01184 | 2.50234                      | 2.49129 | 2.57625                                   | 1.72119                                | 1.45734 | 3.33348                                   | 10.64561          | 10.37421 | .023657           | .023054 |                                |        |  |  |
| 500   | 30522  | .22247   | -.02801  | -.01423 | 2.75799                      | 2.79446 | 2.86250                                   | 1.87172                                | 1.60354 | 3.70387                                   | 11.69576          | 11.47783 | .023392           | .022956 |                                |        |  |  |
| 550   | 30522  | .22247   | -.03057  | -.01685 | 3.01042                      | 3.10175 | 3.14875                                   | 2.00991                                | 1.75207 | 4.07426                                   | 12.74046          | 12.58767 | .023164           | .022887 |                                |        |  |  |
| 600   | 30522  | .22247   | -.03312  | -.01968 | 3.26110                      | 3.41290 | 3.43500                                   | 2.14672                                | 1.90282 | 4.44464                                   | 13.78203          | 13.70337 | .022970           | .022839 |                                |        |  |  |
| 700   | 30522  | .22247   | -.03816  | -.02457 | 3.75746                      | 4.02839 | 4.00750                                   | 2.41649                                | 2.19966 | 5.18542                                   | 15.85640          | 15.92409 | .022652           | .022749 |                                |        |  |  |
| 800   | 30522  | .22247   | -.04314  | -.02991 | 4.24808                      | 4.65326 | 4.58000                                   | 2.68191                                | 2.50175 | 5.92619                                   | 17.92073          | 18.15898 | .022401           | .022699 |                                |        |  |  |
| 900   | 30522  | .22247   | -.04807  | -.03571 | 4.73372                      | 5.28730 | 5.15250                                   | 2.94362                                | 2.80898 | 6.66697                                   | 19.97643          | 20.40773 | .022196           | .022675 |                                |        |  |  |
| 1000  | 30522  | .22247   | -.05296  | -.04197 | 5.21510                      | 5.92995 | 5.72500                                   | 3.20216                                | 3.12108 | 7.40774                                   | 22.02473          | 22.66949 | .022025           | .022669 |                                |        |  |  |
| 1100  | 30522  | .22247   | -.05781  | -.04637 | 5.69250                      | 6.55137 | 6.29750                                   | 3.45781                                | 3.41979 | 8.14851                                   | 24.06620          | 24.89849 | .021878           | .022635 |                                |        |  |  |
| 1200  | 30522  | .22247   | -.06262  | -.05079 | 6.16639                      | 7.17536 | 6.87000                                   | 3.71093                                | 3.71973 | 8.88929                                   | 26.10168          | 27.13128 | .021751           | .022609 |                                |        |  |  |

<sup>1</sup> Omits Solicitors Wages for comparable omission of cost of solicitation and maintenance of Chain Store accounts by Bowman. Cost data for use with January 1956 discount schedules.

<sup>2</sup> From Bowman Cost Schedule in Rebuttal Exhibit K-3 for December 1955 @ \$.30522 per customer per day, as calculated on Table 8-A.

<sup>3</sup> From Bowman Cost Schedule in Rebuttal Exhibit K-3 for December 1955 @ \$.222469 per customer per day rate, as calculated on Table 8-B, for lack of a more appropriate time study allocation. Includes prorated Vacation Benefit Costs.

<sup>4</sup> Derived from cost rate in Table 8-C applied to the Number of Glass Containers in Table 15; negative bottle expenses reflect more deposits received than bottle expenses incurred.

<sup>5</sup> Derived from cost rate in Table 8-D applied to the Number of Cases in Table 15.

<sup>6</sup> Derived from cost rate per point in Table 8-E applied to the number of daily points delivered indicating size of store.

<sup>7</sup> As calculated on Table 15.

<sup>8</sup> As calculated on Table 8-G by applying the indicated cost rate per point (\$.00740774) to the number of average daily points delivered indicating the size of store.

<sup>9</sup> Average cost per point delivered daily.

[fol. 1173]

TABLE 13-A

Bowman Wholesale Customers: Rebuttal Evidence—Independent Stores  
Average Number of Glass Containers, and Per Cent of Total Containers Delivered Daily by Size of Store in September 1955

(Based on  $\frac{1}{3}$  Sample of all Routes in Each Division: Elston, Forest and South)

| Store Size<br>(Daily Average<br>Points Delivered) |                     | Average per<br>Store <sup>1</sup> | Number of Containers Delivered Daily |                    |                    |                   |                  |                    |                    |                   | Percentage of Glass Containers<br>Delivered Daily |                    |                    |                   |
|---|---------------------|-----------------------------------|--------------------------------------|--------------------|--------------------|-------------------|------------------|--------------------|--------------------|-------------------|---|--------------------|--------------------|-------------------|
|   |                     |                                   | Fiber and Glass Total                |                    |                    |                   | Glass Only       |                    |                    |                   |   |                    |                    |                   |
|   | Points<br>Delivered | All<br>Containers                 | All<br>Divisions                     | Elston<br>Division | Forest<br>Division | South<br>Division | All<br>Divisions | Elston<br>Division | Forest<br>Division | South<br>Division | All<br>Divisions                                  | Elston<br>Division | Forest<br>Division | South<br>Division |
| 0 under 5...                                      | 3.25                | 2 548                             | 68.8                                 | 39.3               | 10.3               | 19.2              | 12.7             | 8.4                | 2.2                | 2.1               | 18.46   | 21.37              | 21.36              | 10.94             |
| 5 under 10...                                     | 7.65                | 6 449                             | 393.4                                | 126.4              | 125.1              | 141.9             | 32.5             | 13.4               | 11.9               | 7.2               | 8.26  | 10.60              | 9.51               | 5.07              |
| 10 under 15...                                    | 12.44               | 10 665                            | 639.9                                | 256.0              | 210.3              | 173.6             | 26.7             | 12.6               | 3.6                | 10.5              | 4.17  | 4.92               | 1.71               | 6.05              |
| 15 under 20...                                    | 17.11               | 13 522                            | 973.6                                | 426.9              | 299.2              | 247.5             | 64.6             | 27.7               | 20.9               | 16.0              | 6.64  | 6.49               | 6.99               | 6.46              |
| 20 under 25...                                    | 22.53               | 17 631                            | 969.7                                | 354.5              | 307.3              | 307.9             | 48.4             | 17.3               | 21.1               | 10.0              | 4.99  | 4.88               | 6.87               | 3.25              |
| 25 under 30...                                    | 27.34               | 20 745                            | 1,016.5                              | 450.8              | 271.0              | 294.7             | 72.3             | 25.6               | 16.6               | 30.1              | 7.11  | 5.68               | 6.13               | 10.21             |
| 30 under 35...                                    | 32.40               | 23 877                            | 1,146.1                              | 517.7              | 345.0              | 283.4             | 112.7            | 40.4               | 37.2               | 35.1              | 9.83  | 7.80               | 10.78              | 12.39             |
| 35 under 40...                                    | 37.24               | 28 634                            | 1,174.0                              | 295.1              | 378.5              | 500.4             | 73.4             | 13.3               | 35.5               | 24.6              | 6.25  | 4.51               | 9.38               | 4.92              |
| 40 under 45...                                    | 42.48               | 32 961                            | 1,252.5                              | 389.7              | 435.2              | 427.6             | 95.7             | 25.5               | 47.4               | 22.8              | 7.64  | 6.54               | 10.89              | 5.33              |
| 45 under 50...                                    | 47.36               | 34 398                            | 1,410.3                              | 514.5              | 574.1              | 321.7             | 135.0            | 52.9               | 54.8               | 27.3              | 9.57  | 10.28              | 9.55               | 8.49              |
| 50 under 60...                                    | 54.64               | 38 647                            | 2,318.8                              | 896.8              | 978.4              | 443.6             | 270.8            | 111.2              | 106.0              | 53.6              | 11.68   | 12.40              | 10.83              | 12.08             |
| 60 under 70...                                    | 65.08               | 44 289                            | 2,435.9                              | 975.3              | 829.2              | 631.4             | 311.9            | 129.7              | 120.3              | 61.9              | 12.80   | 13.30              | 14.51              | 9.80              |
| 70 under 80...                                    | 74.93               | 54 548                            | 2,509.2                              | 800.4              | 592.5              | 1,116.3           | 238.8            | 73.6               | 95.8               | 69.4              | 9.52  | 9.20               | 16.17              | 6.22              |
| 80 under 90...                                    | 83.61               | 57 527                            | 1,495.7                              | 388.6              | 598.9              | 508.2             | 192.5            | 56.3               | 80.2               | 56.0              | 12.87   | 14.49              | 13.39              | 11.02             |
| 90 under 100...                                   | 95.49               | 67 418                            | 2,224.8                              | 1,148.9            | 691.8              | 384.1             | 243.4            | 128.1              | 58.6               | 56.7              | 10.94   | 11.15              | 8.47               | 14.76             |
| 100 under 120...                                  | 108.03              | 72 359                            | 3,328.5                              | 1,076.8            | 1,552.6            | 699.1             | 435.9            | 138.4              | 212.8              | 84.7              | 13.10   | 12.85              | 13.71              | 12.12             |
| 120 under 140...                                  | 127.09              | 84 432                            | 2,617.4                              | 544.4              | 1,055.5            | 1,017.5           | 366.2            | 99.7               | 158.3              | 108.2             | 13.99   | 18.31              | 15.00              | 10.63             |
| 140 under 160...                                  | 148.27              | 99 853                            | 1,497.8                              | 634.4              | 268.1              | 595.3             | 164.7            | 54.4               | 32.2               | 78.1              | 11.00   | 8.58               | 12.01              | 13.12             |
| 160 under 180...                                  | 167.62              | 108 167                           | 1,298.0                              | 837.7              | 259.9              | 200.4             | 160.5            | 118.6              | 6.3                | 35.6              | 12.37   | 14.16              | 2.42               | 17.76             |
| 180 under 200...                                  | 188.43              | 119 143                           | 834.0                                | 230.1              | 119.2              | 484.7             | 114.7            | 37.9               | 7.1                | 69.7              | 13.75   | 16.47              | 5.96               | 14.38             |
| 200 under 400...                                  | 274.63              | 173 483                           | 2,081.8                              | 1,064.8            | 355.3              | 661.7             | 273.5            | 132.9              | 39.0               | 101.6             | 13.14   | 12.48              | 10.98              | 15.35             |
| 400 and over...                                   | 536.38              | 287 825                           | 1,151.3                              | 455.0              | —                  | 696.3             | 234.2            | 106.4              | —                  | 127.8             | 20.34   | 23.38              | —                  | 18.35             |
| Total.....  | —                   | —                                 | 32,838.0                             | 12,424.1           | 10,257.4           | 10,156.5          | 3,681.1          | 1,124.3            | 1,167.8            | 1,089.0           | 11.21   | 11.46              | 11.38              | 10.72             |

<sup>1</sup> All Divisions.

[fol. 1174]

TABLE 13-B

Bowman Wholesale Customers: Rebuttal Evidence—Chain Stores  
Average Number of Glass Containers, and Per Cent of Total Containers Delivered Daily by Size of Store in September 1955

(Based on  $\frac{1}{3}$  Sample of all Routes in Each Division—Elston, Forest and South)

| Store Size<br>(Daily Points<br>Delivered) | Average<br>per Store <sup>1</sup> |                   | Number of Containers Delivered Daily |                    |                    |                   |                  |                    |                    |                   | Percentage of Glass Containers<br>Delivered Daily |                    |                    |                   |
|---|-----------------------------------|-------------------|--------------------------------------|--------------------|--------------------|-------------------|------------------|--------------------|--------------------|-------------------|---|--------------------|--------------------|-------------------|
|   | Points<br>Delivered               | All<br>Containers | Fiber and Glass                      |                    |                    |                   | Glass Only       |                    |                    |                   | All<br>Divisions                                  | Elston<br>Division | Forest<br>Division | South<br>Division |
|   |                                   |                   | All<br>Divisions                     | Elston<br>Division | Forest<br>Division | South<br>Division | All<br>Divisions | Elston<br>Division | Forest<br>Division | South<br>Division |   |                    |                    |                   |
| 0 under 90                                | —                                 | —                 | —                                    | —                  | —                  | —                 | —                | —                  | —                  | —                 | —   | —                  | —                  | —                 |
| 90 under 100                              | 93.5                              | 50.80             | 50.8                                 | —                  | —                  | 50.8              | 8.9              | —                  | —                  | 8.9               | 17.52   | —                  | —                  | 17.52             |
| 100 under 120                             | 117.7                             | 64.90             | 64.9                                 | —                  | —                  | 64.9              | 11.5             | —                  | —                  | 11.5              | 17.72   | —                  | —                  | 17.72             |
| 120 under 140                             | —                                 | —                 | —                                    | —                  | —                  | —                 | —                | —                  | —                  | —                 | —   | —                  | —                  | —                 |
| 140 under 160                             | —                                 | —                 | —                                    | —                  | —                  | —                 | —                | —                  | —                  | —                 | —   | —                  | —                  | —                 |
| 160 under 180                             | 175.6                             | 101.80            | 101.8                                | —                  | —                  | 101.8             | 19.2             | —                  | —                  | 19.2              | 18.86   | —                  | —                  | 18.86             |
| 180 under 200                             | 191.7                             | 137.45            | 274.9                                | 135.5              | —                  | 139.4             | 15.0             | 9.6                | —                  | 5.4               | 5.46  | 7.08               | —                  | 3.87              |
| 200 under 250                             | 220.6                             | 157.47            | 472.4                                | 336.6              | —                  | 135.8             | 19.3             | 11.1               | —                  | 8.2               | 4.09  | 3.30               | —                  | 6.04              |
| 250 under 300                             | 273.4                             | 171.68            | 1,545.1                              | 374.2              | 498.6              | 672.3             | 143.9            | 30.3               | 39.4               | 74.2              | 9.31  | 8.10               | 7.90               | 11.04             |
| 300 under 350                             | 322.4                             | 225.83            | 903.3                                | 443.8              | 459.5              | —                 | 28.2             | 12.3               | 15.9               | —                 | 3.12  | 2.77               | 3.46               | —                 |
| 350 under 400                             | 360.2                             | 247.13            | 1,977.0                              | 768.1              | 274.6              | 934.3             | 119.0            | 22.9               | 6.4                | 89.7              | 6.02  | 2.98               | 2.33               | 9.60              |
| 400 under 450                             | 429.1                             | 277.36            | 1,396.8                              | 862.3              | —                  | 524.5             | 119.1            | 63.3               | —                  | 55.8              | 8.59  | 7.34               | —                  | 10.64             |
| 450 under 500                             | 459.5                             | 274.90            | 274.9                                | —                  | —                  | 274.9             | 33.2             | —                  | —                  | 33.2              | 12.08   | —                  | —                  | 12.08             |
| 500 under 600                             | 539.9                             | 366.06            | 2,928.5                              | 771.7              | 735.9              | 1,420.9           | 188.6            | 42.0               | 49.0               | 97.6              | 6.44  | 5.44               | 6.66               | 6.87              |
| 600 under 700                             | 656.9                             | 431.15            | 3,449.2                              | 1,209.7            | —                  | 2,293.5           | 271.0            | 91.1               | —                  | 179.9             | 7.86  | 7.53               | —                  | 8.03              |
| 700 under 800                             | 733.2                             | 496.63            | 3,476.4                              | 993.8              | 1,073.5            | 1,409.1           | 249.4            | 65.7               | 48.1               | 135.6             | 7.17  | 6.61               | 4.48               | 9.62              |
| 800 under 900                             | 832.6                             | 497.87            | 1,493.6                              | —                  | 485.2              | 1,008.4           | 459.7            | —                  | 57.7               | 102.0             | 10.69   | —                  | 11.89              | 10.12             |
| 900 under 1,000                           | 966.3                             | 667.80            | 2,003.4                              | 641.8              | 751.9              | 609.7             | 159.5            | 63.5               | 33.6               | 62.4              | 7.96  | 9.89               | 4.47               | 10.23             |
| 1,000 and over                            | 1,129.5                           | 705.25            | 1,410.5                              | —                  | 687.1              | 723.4             | 129.8            | —                  | 37.7               | 92.1              | 9.20  | —                  | 5.49               | 12.73             |
| Total <sup>2</sup>                        | —                                 | —                 | 21,813.5                             | 6,537.5            | 4,966.3            | 10,309.7          | 1,675.3          | 411.8              | 287.8              | 975.7             | 7.68  | 6.17               | 5.80               | 9.46              |

<sup>1</sup> All Divisions.

[fol. 1179]

TABLE 17-A

Bowman Wholesale Customers: Summary of Rebuttal and Bowman Unit Delivery Cost and Discount Differences Between Independent and Chain Customers By Size of Store for March 1955

| Size of Store<br>(Points Delivered<br>Daily) | Rebuttal Unit Costs <sup>1</sup> |        |                                     | Discount<br>Differences                  |                                     | Bowman Unit Costs <sup>4</sup> |                           |
|--|----------------------------------|--------|-------------------------------------|--|-------------------------------------|--------------------------------|---------------------------|
|  | Independents                     | Chains | Relative<br>Difference <sup>2</sup> | (Chain Less<br>Independent) <sup>3</sup> | Relative<br>Difference <sup>2</sup> | Chains <sup>4</sup>            | Independents <sup>4</sup> |
| 10   | 11 2118                          | -      | -                                   | -  | -                                   | -                              | 23 04                     |
| 20   | 6 9242                           | -      | -                                   | -  | -                                   | -                              | 12 62                     |
| 30   | 5 5601                           | -      | -                                   | -  | -                                   | -                              | 9 26                      |
| 40   | 4 8803                           | -      | -                                   | -  | -                                   | -                              | 7 70                      |
| 50   | 4 4827                           | 4 2525 | 1 123                               | 6 00                                     | 5 27                                | 5 59                           | 6 67                      |
| 60   | 4 2122                           | 3 9877 | 1 095                               | 5 80                                     | 4 88                                | 5 06                           | 6 07                      |
| 70   | 4 0238                           | 3 7993 | 1 095                               | 5 60                                     | 4 59                                | 4 62                           | 5 56                      |
| 80   | 3 8727                           | 3 6558 | 1 058                               | 5 40                                     | 4 39                                | 4 34                           | 5 24                      |
| 90   | 3 7565                           | 3 5414 | 1 049                               | 5 20                                     | 4 24                                | 4 08                           | 4 95                      |
| 100  | 3 6647                           | 3 4490 | 1 052                               | 5 00                                     | 4 10                                | 3 91                           | 4 75                      |
| 120  | 3 5170                           | 3 3104 | 1 008                               | 4 60                                     | 3 90                                | 3 62                           | 4 42                      |
| 140  | 3 4122                           | 3 2080 | 991                                 | 4 20                                     | 3 76                                | 3 42                           | 4 19                      |
| 160  | 3 3239                           | 3 1181 | 1 004                               | 3 80                                     | 3 66                                | 3 27                           | 4 02                      |
| 180  | 3 2544                           | 3 0424 | 1 034                               | 3 40                                     | 3 56*                               | 3 15                           | 3 88                      |
| 200  | 3 2005                           | 2 9772 | 1 089                               | 3 00                                     | 3 51*                               | 3 05                           | 3 77                      |
| 225  | 3 1414                           | 2 8997 | 1 179                               | 3 00                                     | 3 46*                               | 2 96                           | 3 67                      |
| 250  | 3 0931                           | 2 8430 | 1 220                               | 3 00                                     | 3 37*                               | 2 87                           | 3 56                      |
| 300  | 3 0174                           | 2 7716 | 1 199                               | 3 00                                     | 3 32*                               | 2 76                           | 3 44                      |
| 350  | 2 9649                           | 2 7270 | 1 160                               | 3 00                                     | 3 27*                               | 2 67                           | 3 34                      |
| 400  | 2 9236                           | 2 7093 | 1 045                               | 3 00                                     | 3 22*                               | 2 62                           | 3 28                      |
| 500  | 2 8593                           | 2 7000 | 777                                 | 3 00                                     | 3 17*                               | 2 53                           | 3 18                      |
| 600  | 2 8114                           | 2 7082 | 503                                 | 3 00                                     | 3 12*                               | 2 47                           | 3 11                      |
| 700  | 2 7749                           | 2 7099 | 317                                 | 3 00                                     | 3 07*                               | 2 43                           | 3 06                      |

[TABLE 17-A—CONTINUED ON PAGE 490]



|      |        |        |       |      |       |      |      |
|------|--------|--------|-------|------|-------|------|------|
| 800  | 2 7459 | 2 7155 | 148   | 3 00 | 3 07* | 2 40 | 3 03 |
| 900  | 2 7219 | 2 7238 | - 009 | 3 00 | 3 07* | 2 37 | 3 00 |
| 1000 | 2 7018 | 2 7339 | - 157 | 3 00 | 3 07* | 2 35 | 2 98 |
| 1100 | 2 6844 | 2 7316 | - 230 | 3 00 | 3 02* | 2 34 | 2 96 |
| 1200 | 2 6693 | 2 7301 | - 297 | 3 00 | 3 02* | 2 33 | 2 95 |

Cost

<sup>1</sup> From Table 16-A. Excludes the Constant Platform Unit Costs as irrelevant to the cost difference.

<sup>2</sup> Ratio (%) of Cost Difference (Independents Less Chains) to list Price of 20.5¢ per quart. Where Chain Unit Costs exceed those of Independents, they are indicated by the minus (-) sign.

<sup>3</sup> Difference between Discount Schedules in effect March 1955, as stated in "Discount Schedule Tests-March 1955" and the Chain Discount of 11% then in effect.

<sup>4</sup> From Bowman "Discount Schedule Tests-March 1955", Schedule 3, computed at \$.182 of total delivery cost per route minute.

<sup>5</sup> From Bowman "Discount Schedule Tests-March 1955", Schedule 4, computed at \$.182 of total delivery cost per route minute.

<sup>6</sup> Platform Constant Unit Costs are omitted as irrelevant to the Cost Difference between Chain and Independent stores.

\* Relative Cost Difference equal to or greater than corresponding Discount Difference (cost justified).

[fol. 1180]

TABLE 17-B

Bowman Wholesale Customers: Summary of Rebuttal and Bowman Unit Delivery Cost and Discount Differences Between Independent and Chain Customers By Size of Store as of January 1956

| Size of Store<br>(Points Delivered<br>Daily) | Rebuttal Unit Costs <sup>1</sup> |        |                                     | Discount<br>Differences                  |                                     | Bowman Unit Costs <sup>2</sup> |                           |
|--|----------------------------------|--------|-------------------------------------|--|-------------------------------------|--------------------------------|---------------------------|
|  | Independents                     | Chains | Relative<br>Difference <sup>3</sup> | (Chain Less<br>Independent) <sup>4</sup> | Relative<br>Difference <sup>5</sup> | Chains <sup>6</sup>            | Independents <sup>7</sup> |
| 25   | \$ 6290                          | \$     |                                     |  |                                     |                                |                           |
| 30   | 5 0758                           | -      | -                                   | 8 00                                     | 9 90*                               | 8 89                           | 10 87                     |
| 40   | 4 3855                           | -      | -                                   | 7 92                                     | 7 95*                               | 7 83                           | 9 42                      |
| 50   | 3 9712                           | 3 7085 | 1 314                               | 7 77                                     | 7 35                                | 6 36                           | 7 83                      |
| 60   | 3 6911                           | 3 4482 | 1 215                               | 7 62                                     | 7 00                                | 5 38                           | 6 78                      |
| 70   | 3 4911                           | 3 2631 | 1 140                               | 7 46                                     | 6 80                                | 4 81                           | 6 17                      |
| 80   | 3 3370                           | 3 1240 | 1 065                               | 7 31                                     | 6 20                                | 4 41                           | 5 65                      |
| 90   | 3 2168                           | 3 0152 | 1 008                               | 6 15                                     | 5 80                                | 4 11                           | 5 27                      |
| 100  | 3 1204                           | 2 9282 | 961                                 | 7 00                                     | 5 80                                | 3 87                           | 5 03                      |
| 120  | 2 9914                           | 2 7983 | 866                                 | 6 90                                     | 5 50                                | 3 68                           | 4 78                      |
| 140  | 2 8638                           | 2 7052 | 793                                 | 6 70                                     | 5 30                                | 3 40                           | 4 46                      |
| 160  | 2 7793                           | 2 6313 | 740                                 | 6 50                                     | 5 30                                | 3 16                           | 4 22                      |
| 180  | 2 7126                           | 2 5726 | 700                                 | 6 30                                     | 5 20                                | 3 01                           | 4 05                      |
| 190  | 2 6645                           | 2 5474 | 686                                 | 6 10                                     | 5 10                                | 2 90                           | 3 92                      |
| 200  | 2 6592                           | 2 5245 | 674                                 | 6 00                                     | 4 95                                | 2 85                           | 3 84                      |
| 225  | 2 6036                           | 2 4729 | 654                                 | 5 91                                     | 5 05                                | 2 80                           | 3 81                      |
| 250  | 2 5583                           | 2 4335 | 624                                 | 5 68                                     | 4 90                                | 2 70                           | 3 68                      |
| 300  | 2 4881                           | 2 3792 | 545                                 | 5 45                                     | 4 90                                | 2 62                           | 3 60                      |
| 315  | 2 4713                           | 2 3671 | 521                                 | 5 00                                     | 4 75                                | 2 51                           | 3 46                      |
| 330  | 2 4558                           | 2 3561 | 499                                 | 4 86                                     | 4 75                                | 2 48                           | 3 43                      |
| 340  | 2 4463                           | 2 3493 | 485                                 | 4 73                                     | 4 75*                               | 2 45                           | 3 40                      |
| 350  | 2 4374                           | 2 3428 | 473                                 | 4 64                                     | 4 80*                               | 2 43                           | 3 39                      |
| 355  | 2 4332                           | 2 3401 | 466                                 | 4 55                                     | 4 75*                               | 2 42                           | 3 37                      |
|  |                                  |        |                                     | 4 50                                     | 4 70*                               | 2 42                           | 3 36                      |

[TABLE 17-B—CONTINUED ON PAGE 492]

|      |        |        |       |      |       |      |      |
|------|--------|--------|-------|------|-------|------|------|
| 375  | 2 4167 | 2 3309 | 429   | 4 50 | 4 80* | 2 38 | 3 34 |
| 400  | 2 3979 | 2 3208 | 386   | 4 50 | 4 65* | 2 37 | 3 30 |
| 450  | 2 3657 | 2 3054 | 302   | 4 50 | 4 70* | 2 31 | 3 25 |
| 500  | 2 3392 | 2 2956 | 218   | 4 50 | 4 60* | 2 28 | 3 20 |
| 550  | 2 3164 | 2 2887 | 139   | 4 50 | 4 60* | 2 24 | 3 16 |
| 600  | 2 2970 | 2 2839 | 066   | 4 50 | 4 60* | 2 21 | 3 13 |
| 700  | 2 2652 | 2 2749 | - 049 | 4 50 | 4 55* | 2 17 | 3 08 |
| 800  | 2 2401 | 2 2699 | - 149 | 4 50 | 4 55* | 2 14 | 3 05 |
| 900  | 2 2196 | 2 2675 | - 240 | 4 50 | 4 50* | 2 12 | 3 02 |
| 1000 | 2 2025 | 2 2669 | - 322 | 4 50 | 4 50* | 2 10 | 3 00 |
| 1100 | 2 1878 | 2 2635 | - 379 | 4 50 | 4 50* | 2 08 | 2 98 |
| 1200 | 2 1751 | 2 2609 | - 429 | 4 50 | 4 50* | 2 07 | 2 97 |

\* From Table 16-B. Excludes the Constant Platform Unit Costs as irrelevant to the cost difference.

\* Ratio (%) of Cost Difference (Independents less Chains) to List Price of 20¢ per quart. Where Chain Unit Costs exceed those of Independents they are indicated by the minus (-) sign.

\* Difference between discount schedules in effect in January 1956, as stated in Bowman's "Testing Discount Schedules of January 2, 1956," and the Chains' discount of 10% then in effect.

\* From Bowman's "Testing Discount Schedules of January 2, 1956," *Schedule 3-B*, computed at \$.185 total delivery cost per minute.

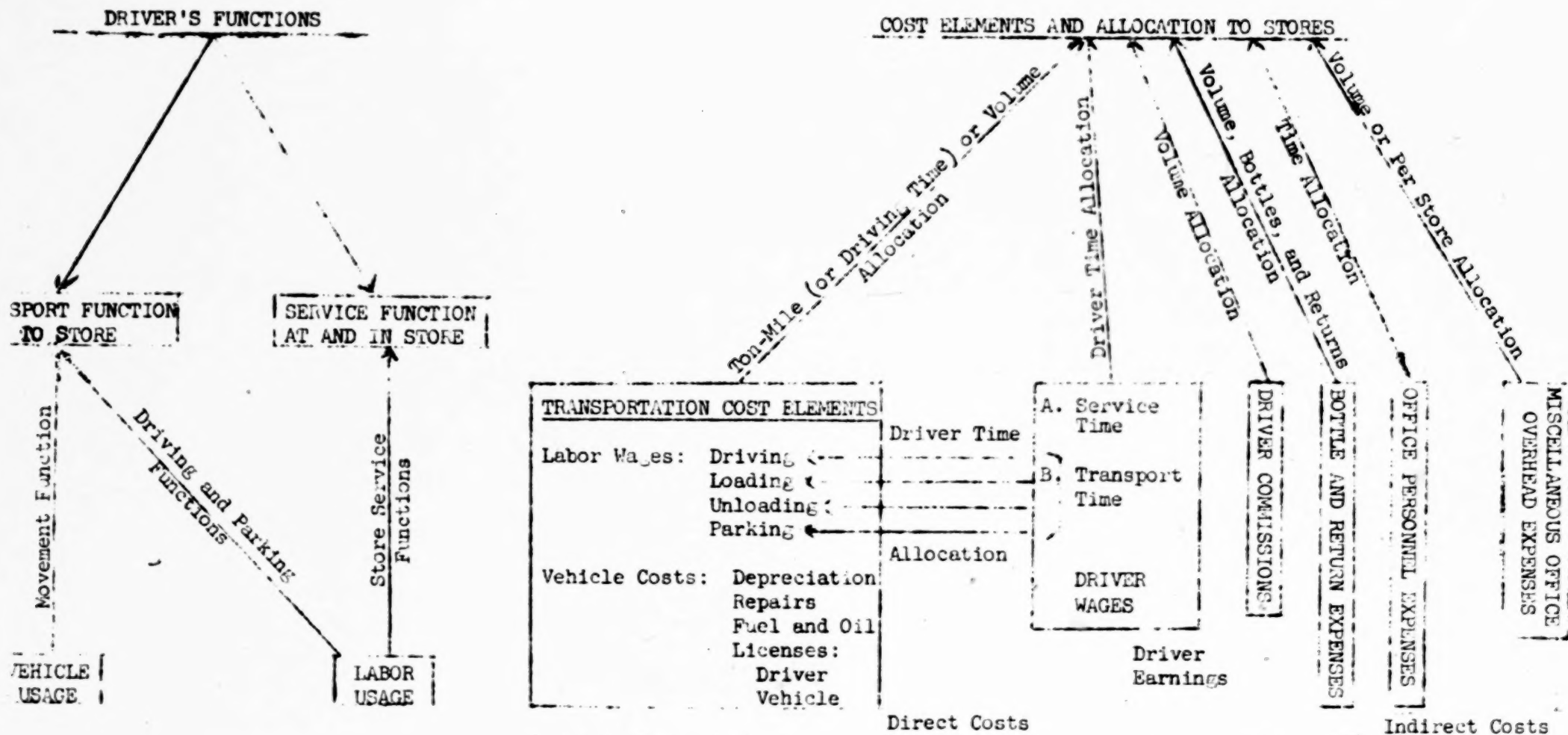
\* From Bowman's "Testing Discount Schedules of January 2, 1956," *Schedule 3-A*, computed at \$.185 total delivery cost per route minute.

\* Platform Constant Unit Costs are omitted as irrelevant to the Cost Difference between Chain and Independent stores.

\* Relative Cost Difference equal to or greater than corresponding Discount Difference (cost justified).

REBUTTAL EXHIBIT J

NATURE OF DRIVER'S FUNCTIONS AND COST ELEMENTS  
FOR ALLOCATION THROUGH DELIVERY FUNCTIONS



[fol. 1182]

## REBUTTAL EXHIBIT K-1

Bowman Dairy Company

Copy

July 25th, 1957

Mr. E. Woolley,  
U. S. Department of Justice,  
Anti-Trust Division,  
219 South Clark Street,  
Chicago, Illinois.

DEAR MR. WOOLLEY:

The information that you requested of me on Monday of this week is attached.

This includes those monthly summaries of store division delivery expenses from which were derived the \$.182 delivery cost rate in the test of March, 1955, and the \$.185 delivery cost rate in the test of January, 1956.

For the same divisions and the same periods, the following data is also tabulated: Total points delivered, total glass containers delivered, total number of case equivalents delivered, number of customers served, total number of delivery days.

Figures representing quantities of merchandise delivered, including case equivalents, include the bulk merchandise sold by these divisions.

Very truly yours, Stevenson, Jordan & Harrison, Inc.  
R. G. Havemeyer.

RGH:ch

Enclosure

CC: L. E. Hart, Jr.

[fol. 1183]

## REBUTTAL EXHIBIT K-2

Copy

Elston, Forest and South Store Divisions

|                                       | March<br>1955 | December<br>1955 |
|---------------------------------------|---------------|------------------|
| Total Points Delivered.....           | 7,222,640     | 8,258,790        |
| Total Glass Containers Delivered..... | 642,083       | 1,242,401        |
| Total Case Equivalents Delivered*     | 150,019       | 183,824          |
| Number of Customers Served.....       | 3,389         | 3,153            |
| Total Delivery Days (Route Days)..... | 4,900         | 4,675            |
| Total Number of Routes**.....         | 181           | 173              |

\* Computed by dividing the total quantity delivered of each item by its appropriate "containers per case."

\*\* Information supplied over the telephone from Mr. Havemeyer to Mr. Woolley.

[fol. 1184]

## REBUTTAL EXHIBIT K-3(p. 1)

Summary of Sales, Delivery, and Collection Expense

Elston, Forest, and South Divisions

|   | March<br>1955       | December<br>1955    |
|---|---------------------|---------------------|
| <b>Auto Expenses</b>                    |                     |                     |
| Auto Depreciation.....                  | \$ 6,452 28         | \$ 6,452 28         |
| Auto Gas and Oil.....                   | 6,769 66            | 7,102 22            |
| Auto Insurance.....                     | 2,181 99            | 1,639 92            |
| Auto License.....                       | 2,688 99            | 2,808 80            |
| Auto Rental Proration.....              | 36 00               | -                   |
| Auto Repairs and Supplies.....          | 8,673 18            | 8,501 00            |
| Auto Repair and Upkeep Wages.....       | 9,212 66            | 9,272 46            |
| <b>Total.....</b>                       | <b>\$ 36,014 76</b> | <b>\$ 35,776 68</b> |
| <b>Salaries and Wages</b>               |                     |                     |
| Delivery Wages.....                     | \$101,528 98        | \$ 98,458 50        |
| Milkroom Wages.....                     | 30,810 31           | 32,145 92           |
| Solicitors' Wages.....                  | 12,837 56           | 14,467 58           |
| Office Salaries and Wages.....          | 17,353 48           | 17,162 58           |
| Truck Drivers' Wages.....               | 527 45              | 552 29              |
| Vacation Wages.....                     | 8,030 00            | 8,030 00            |
| Personnel Benefits.....                 | 13,833 43           | 9,777 41            |
| <b>Total.....</b>                       | <b>\$184,921 21</b> | <b>\$180,584 28</b> |
| (Total excluding Vacation and Benefits) | 163,057 78          | 162,786 87)         |
| <b>Total Commissions.....</b>           | <b>44,087 30</b>    | <b>47,286 26</b>    |
| <b>Bottle Expenses</b>                  |                     |                     |
| Bottle Deposit.....                     | 499 70              | (1,987 44)          |
| Bottle Loss.....                        | 2,873 36            | ( 909 69)           |
| Foreign Bottles.....                    | (67 02)             | -                   |
| Bottle Expense.....                     | 757 52              | 2,118 85            |
| Bottle Allowance.....                   | 12,579 14           | -                   |
| <b>Total.....</b>                       | <b>\$ 16,642 70</b> | <b>\$ ( 778 28)</b> |

[ fol. 1185 ]

## REBUTTAL EXHIBIT K-3(p. 2)

| Other Expense                  | March<br>1955 | December<br>1955 |
|--------------------------------|---------------|------------------|
| Advertising                    | \$ 8,086.52   | \$ 3,715.70      |
| Bad Debts                      | 647.42        | 319.74           |
| Bad Debt Collections           |               | ( 43.71 )        |
| Building Repairs               | 368.85        | 272.22           |
| Depreciation                   | 1,708.32      | 1,708.32         |
| Donations                      | 250.00        | 40.00            |
| Equipment Repairs              | 301.73        | 116.38           |
| Expense Transfers              | 377.68        | ( 41.94 )        |
| Ice and Refrigeration          | 241.45        | 254.05           |
| Illinois Occupation Tax        |               |                  |
| Insurance                      | 38.40         | 36.81            |
| Laundry                        | 56.28         | 101.07           |
| License                        | 882.16        | 934.65           |
| Membership and Dues            | 206.52        | 40.52            |
| Miscellaneous Expenses         | 1,249.92      | 1,664.99         |
| Office Supplies and Expense    | 704.01        | 540.12           |
| Operating Supplies and Expense | 351.63        | 403.39           |
| Painting                       | 84.92         | 62               |
| Rentals                        | 120.50        | 137.50           |
| Sales Contest                  |               | 1,322.69         |
| Store License                  | 345.00        | 3.00             |
| Store Merchandising            | 5,440.50      | 5,727.00         |
| Taxes                          | 1,413.73      | 1,870.19         |
| Telephone                      | 1,086.63      | 1,255.62         |
| Trade Expense                  |               |                  |
| Utilities                      | 2,130.87      | 2,402.45         |
| Vending Machine Expense        | 90.34         | 173.00           |
| Total                          | \$ 30,185.78  | \$ 25,984.38     |
| Total Expense                  | \$311,851.75  | \$288,863.32     |



[fol. 1186]

REBUTTAL EXHIBIT L-1

Copy

Bowman Dairy Company

July 10, 1956.

Mr. E. Woolley,  
U. S. Department of Justice,  
Anti-Trust Division,  
219 South Clark Street,  
Chicago, Illinois.

DEAR MR. WOOLLEY:

We are forwarding to you under separate cover the September 1955 route books for Forest Division (15 books), South Division (20 books), and Elston Division (19 books).

Each group includes every third route in that division, when they are ranked by volume sold in September 1955, including the largest and smallest volume routes.

The need for reference to route books of previous months frequently arises. We would appreciate their return at your earliest convenience.

Very truly yours, Bowman Dairy Company, s/ C. K. Brown, Assistant Controller.

rf.

[fol. 1187]

REBUTTAL EXHIBIT L-2

Copy

Bowman Dairy Company

Received from Bowman Dairy Company the following route books for the month of September, 1955.

Elston Division

|     |      |
|-----|------|
| 52  | 748  |
| 88  | 914  |
| 126 | 1183 |
| 190 | 1475 |
| 257 | 1899 |
| 271 | 2058 |
| 590 | 2069 |
| 646 | 2149 |
| 853 | 2220 |
|     | 2226 |

U. S. Department of Justice, Anti-Trust Division, By  
s Elliott B. Woolley.

[fol. 1188]

## REBUTTAL EXHIBIT L-3

Copy

Bowman Dairy Company

Received from Bowman Dairy Company the following route books  
for the month of September, 1935

| South Division |      | Forest Division |      |
|----------------|------|-----------------|------|
| 33             | 1537 | 1263            | 296  |
| 73             | 1713 | 92              | 3    |
| 129            | 1813 | 1992            | 783  |
| 241            | 1863 | 574             | 364  |
| 777            | 1876 | 1566            | 1960 |
| 827            | 1879 | 1722            | 1003 |
| 880            | 1942 | 1978            | 1073 |
| 1261           | 1999 | 1150            |      |
| 1268           | 2020 |                 |      |
| 1343           | 2232 |                 |      |

U. S. Department of Justice, Anti-Trust Division, By  
s/ Elliott B. Woolley.

[fol. 1189]

## REBUTTAL EXHIBIT X (p. 1)

## Milk Wagon Drivers' Union

Local 753, I. B. of T., C., W. &amp; H. of A.

## Articles of Agreement

Between \_\_\_\_\_ milk dealer, party of the  
first part, hereinafter called the Employer, or Processor,  
and the Milk Wagon Drivers' Union, Local 753, I. B. of  
T., C., W. & H. of A., party of the second part, hereinafter  
called the Union.

Article 1. For all types of work coming under the present  
jurisdiction of the Union, the Employer shall hire members  
of the Union or those who will become members within thirty  
(30) days after employment, subject to acceptance by the  
membership.

Inexperienced men shall have the status of apprentices,  
relative to wages only, for a period of thirteen (13) weeks  
from the date of employment.

Article 2. The Employer shall choose men from the elig-  
ible list in the order of their company seniority in the respec-  
tive departments. The Employer agrees when hiring addi-

tional men to refer to the Union's list of unemployed men laid off by the Employer within a period of one year from the date of the vacancy and shall hire eligible men from such list in preference to others. It is further agreed that no man shall be entitled to have his name on the eligible list who has been discharged for cause or who is incompetent in that he is not physically able to perform his duties, has not had at least one year's continuous experience with an employer party to this contract or who has had an unsatisfactory performance record.

**Article 3. Seniority in Lay-offs.** Departmental Seniority, as defined hereafter, shall prevail when making lay-offs of employees because of the elimination of positions or routes coming under the jurisdiction of this Agreement. The employee in the department with least service, excepting foremen, in which said lay-off or elimination occurs shall be laid off first; provided that preference with respect to service shall not interfere with the selection of competent drivers properly qualified to serve the types of trade involved. In case a foreman is demoted to the status of a routeman, he takes on seniority rating on the basis of his total length of service. Departmental classifications will be as follows:

**Classifications:**

(a) Department No. 1—Milk sales delivery which includes route-riders, routemen, salesmen and special delivery men. This department shall be confined to the distribution branches of the Employer. Any man transferred from one branch to another with a route or his group of routes shall retain his company seniority. Any man transferred at request of Employer shall retain his company seniority if agreed upon by Union and Employer.

(b) Department No. 2—Transportation men, which includes tank and van drivers. Seniority shall apply to all such men employed by the Employer.

(c) Department No. 3—Truck drivers. Seniority shall apply to all such men employed by the Employer.

(d) Consolidations and Mergers: Company seniority by departments shall govern lay-offs within the branches affected and consolidations of branches owned by the Employer. If the Employer acquires any dairy business by

purchase or merger, employees of the acquired business shall enjoy five years' departmental seniority, provided he has been employed by that company at least five years, in so far as lay-offs are concerned, unless this shall be agreed by both parties to be detrimental to the business. Where the business so acquired has non-union employees, or employees who have been members of the Union for less than five years, the question of seniority for these employees is to be agreed upon between the Employer and the Union, parties to this agreement. This article applies to all consolidations or mergers since 1941.

(e) Seniority in hiring and lay-offs on night routes to be governed same as day routes. No employee with one year or more of continued service shall lose his seniority rating by reason of lay-off, if he is again permanently employed within one year from time of lay-off. Men hired temporarily to run vacation routes or substitute for men on sick leave, shall not be subject to the terms of this article. When it becomes necessary for any employee to leave his employment because of sickness or accident, he shall be given his old position when he again is able in the judgment of competent medical authority, to perform the duties of the job, and shall retain the seniority he had, before he became sick.

(f) The seniority list of men at plant shall be given upon request of the Union steward.

(g) Route bidding— One route pick in six years. If route is taken off, man can rebid in six-year period. Route to be posted for seventy two hours. Two changes on each pick. Preference on route bidding shall not interfere with the selection of competent drivers properly qualified to handle the route. Branch seniority as now in contract. Route Riders jobs to be subject to bid.

Article 4. 40 hours shall constitute a week's work of 5 days of all routemen on retail and store routes, plus eating period of 5 hours per week, and shall include all time required for daily and monthly reports or other book work. Time and one-half for overtime after 45 hours per week with 40 hours computed into base pay to establish hourly rate for overtime pay.

The present delivery system of the six-day operation with No Sunday Delivery shall continue until February 1, 1954, when the Union can request that the sole question of restor-

ing Sunday deliveries shall be determined through the medium of arbitration, such arbiter to be decided by Union and Industry and, if in disagreement, by the Mayor. Throughout this system of delivery, absolutely no deliveries on Sundays or pick-ups allowed.

Each man's time to report and time to unload shall be scheduled. Each man's time shall be recorded on time card by time clock when he starts and finishes his day's work in the make-up room, starting time to be governed by schedules.

Schedules of time, allotting proper number of hours, shall be posted in a prominent place in the office or barn. In case a route is too large to be run within the proper time limit, the load shall be adjusted by the management so that it can be. Routes which pull in when properly serviced in less than the hours scheduled shall be subject to review by the Employer and Union for re-scheduling.

In case a route is too large to be run within the proper time schedule, adjustments when warranted shall be made within two weeks, by the Employer, so that such route can be properly serviced within the Forty-Five hour week. If adjustments are not made within two weeks after request is made by the Union representative, such shall be considered in violation of this Agreement.

The Employer shall provide facilities to load and unload, quickly and properly.

The Employer agrees to main adequate card record time clocks for the purpose of recording the working hours of employees.

The foregoing principles shall also be applied to men serving non-commission trade.

Article 5. In case of breakdown, accident or delay beyond his control, the Union agrees that the Employer shall be allowed reasonable tolerances in enforcement of provisions of Article 4.

[fol. 1190] Article 6. Any matter in dispute between the Union and Employer, which cannot be settled, shall be referred by either party to an Industry Labor Committee consisting of three (3) representatives of Employers parties to this Agreement, and three (3) representatives of the Union. It shall be the duty of this Committee to hear and dispose of all complaints raised by either party to

this Agreement concerning violations thereof that cannot be settled amicably between the parties. If this Committee is equally divided on any such complaint, the Chief Justice of the Municipal Court of Chicago or his nominee shall be called in to act as the impartial member of said Committee and his decision shall be final. No action shall be taken by either party to the Agreement pending the decision of this Committee.

Article 7. If the Employer claims an employee is short in his accounts, the employee or the Union representative shall, upon request, be furnished with an itemized account of the shortage.

Article 8. When any dispute arises as to the hours of work, or to commissions and wages, the Employer agrees to furnish in a reasonable time, time records, reports, load sheets, or any records applying to wages or commissions necessary to determine whether or not a man received the wages and commissions he is entitled to receive.

Article 9. It is agreed by the Union that any member of the Union wishing to quit his position must give his Employer one week's notice. It is agreed by the Employer that if he wishes to discharge a member of the Union, he will give him one week's notice. Proven dishonesty or drunkenness shall be considered just cause for discharge without the one week's notice. At the expiration of the week's notice the member of the Union shall, upon request, be issued a statement with reference to his character and services and receive all monies due him.

Article 10. It is further agreed that no member of the Union will be asked to make any verbal or written contracts which will conflict with this Agreement. Any existing contracts or agreements between members of the Union and the Employer conflicting with this Agreement shall be null and void.

Article 11. Members of the Union shall not be required to perform any duties which conflict in any manner with those required of members of other labor organizations, except for emergencies. Controversies with other labor organizations shall not be considered emergencies. Mem-

bers requested to drive trucks to safety lanes for inspection by the Employer must do so within the work week as specified in this Agreement.

All truck drivers and transportation men leaving their trucks at the end of their day's work at a point away from the starting point shall be paid for time required for the driver to return to the starting point.

**Article 12. Vacations:** It is agreed, that all employees coming under the jurisdiction of this Agreement, shall, at the end of any fifty-two week's service with one firm, be entitled to two weeks' vacation with full pay and commissions excepting as provided in Section II of Article 42. If, at the end of fifty-two weeks, an employee either resigns or is discharged, he shall have two weeks' pay in lieu of his vacation. Summer vacation periods shall be scheduled April 1st of each year to November 1st. Employees to pick their vacation period by order of seniority. Any employee with previous experience going to work on or before January 1st shall at the end of fifty-two weeks of continuous service with one firm, be entitled to two week's vacation, and on April 1st, be entitled to schedule. Men without previous experience do not come under this rule. Such employees starting work after November 1st, shall not be entitled to schedule for vacation until the second vacation period following.

All employees shall receive three (3) weeks' vacation after twelve (12) years of service. Full credit on mergers or when with the same employer in accumulating twelve (12) years of service.

Should any employee resign or be discharged before any period of fifty-two (52) weeks has expired, he shall receive one-twelfth (1/12) of his earned vacation pay for each month of service, providing he has had one earned vacation.

Members leaving employer after May 1, 1953, or those out of industry on that date shall not be entitled to any bridging of service toward computing twelve (12) years' service.

**Article 13.** There shall be steward at each dairy to see that the members of the Union live up to the rules of the Union and dairy. Said steward shall be elected



by members of the Union working at said dairy, or temporarily appointed by Executive Board from said branch or dairy, and shall be allowed one day off during the months of January, April, July and October for the purpose of collecting dues.

**Article 14.** No employee shall be dismissed, transferred or suspended on account of serving on committees of the Union, or as delegate to Labor Conventions, or because of other Union activities.

**Article 15.** All employees coming under the jurisdiction of the Union shall be entitled to a 5-day week. Group seniority to prevail in the selection of days off.

All work performed on the sixth and seventh consecutive day of any work week shall be compensated for at the rate of one and one-half times the regular hourly rate. Employer must notify steward when men are required to work sixth or seventh day.

**Article 16.** In case of a lock-out or strike of any Union, it shall not be considered a violation of this Agreement for the members of this Union to refuse to deliver goods where such controversy is on.

**Article 17.** All guaranteed salary and overtime due shall be paid on Thursday, for the preceding week ending Saturday.

**Article 18.** Any firm requesting drivers to wear uniforms or caps, shall furnish same, free of charge to the employees, shall keep them laundered and in repair at the company expense, and all such articles must bear the union label.

**Article 19.** Should the Employer require the employee to give bond, the same shall be furnished, the employee to pay one-half the total premium. Interest to be paid at the rate of four percent (4%) per annum on all cash deposits when requested by employee annually. Cash deposits to be limited to Two Hundred Dollars (\$200.00).

It is further agreed that all cash deposits of the employee shall be segregated from all other funds on the books of the Employer.

**Article 20.** Should the Union hereafter enter into any

agreement with any milk dealer upon terms and conditions more advantageous to such dealer than the terms and conditions of this Agreement, or should the Union sanction a course of conduct by any milk dealer who has signed this form of agreement enabling him to operate under more advantageous terms and conditions than those provided for in this Agreement, the Employer shall be entitled to adopt such terms and conditions in lieu of those contained in this Agreement.

Article 21. Should any member of the Union be expelled or suspended by the Union, the Employer agrees to discharge such person within fifteen (15) days after receiving written notice from the officials of the Union.

Article 22. It is agreed that all soliciting from the wagon will be done by regular routemen or foremen in their respective territories. When dealers employ solicitors or adjusters they shall be members of Local 753 and receive maximum scale called for in these Articles of Agreement, and hours as specified in Article 4.

Article 23. It is agreed that no employee shall be required to deliver more goods than he can adequately serve within the regular working time specified in this Agreement.

The Employer further agrees not to employ helpers on wagons or trucks to avoid the payment of a routeman's scale of wages.

It is further agreed by both parties hereto that none except authorized employees of the company shall be permitted to ride on any delivery vehicle or serve customers therefrom.

[fol. 1191] Article 24. It is further agreed by the Employer that when a route is split, the driver whose route is so divided shall have first choice of the two routes with full pay for the six months following, or such part thereof as he continues in the employment of the Employer, to be governed by the thirty days' average sales previous to dividing said route.

Article 25. Credits on all stolen, broken, spilled or sour goods are to be allowed for daily upon proper evidence at platform or milk-room. Any man proven dishonest in

securing credits for stolen, broken, spilled or sour goods shall be subject to discharge without further notice.

Article 26. When a route salesman leaves his regular route temporarily, to run vacation routes, he shall receive Two Dollars (\$2.00) per week, in addition to his regular salary, and the commission his regular route earns.

A man hired to run vacation routes shall receive at least half-pay for time spent when learning routes.

Article 27. Retail routeman required to fill out order blanks or reports, or to figure or make up the monthly route-book shall do so within the hours prescribed in this article. Billing Monthly Accounts: 6 hours allowed for book work. Men to total units of sales in book. Companies to bill accounts which have been approved for monthly bills. Men to copy figures from bills into own books.

A committee from both sides to work out a program for billing.

Article 28. Records of all bottle and container charges are to be charged on the customer's page as a separate item, such to be carried in outstanding at the end of each month.

The Employer shall be responsible for fixing credit for customers. The routemen shall be held responsible for any credit extended beyond that established by the Employer. However, no deductions shall be made from the pay of any routeman for extension of credit unless the credit limits so established are marked and initialed on the customer's page in the current route book.

Article 29. The employee will be given credit at the unloading point daily for all unsold goods he did not order. No employee shall be required to pay for goods which he has been unable to sell.

Article 30. Any legitimate shortage created by a routeman, routerider or route forman shall be determined at the end of each month, and posted in route books or on on board by the 12th of following month, and such shortage shall be paid on the following commission pay day. The same shall apply to the crediting of overages.

Article 31. Any routeman absent from his route for a period of not more than fourteen (14) days, shall receive the commission from same; after that period commission is to be paid to whoever is on the route, except as provided for in Articles 26 and 42.

Article 32. If route foreman, route riders, or routemen are required to serve two routes alone in one day, they shall receive one extra day's pay as compensation.

Article 33. Where it is necessary to make special deliveries, such sales shall be credited to the route regularly serving that trade. Full commission shall be paid with no base allowance to special delivery men where such deliveries are made of goods resold when such is not credited to any route.

Article 34. Any employee who has been receiving a premium over the previous established scales shall not lose his premium by reason of the execution of this Agreement. This clause shall not apply in cases of demotions or change in job classification.

Article 35. An employee working 51% of his time at any of the within classified occupations shall receive the highest scale specified for such work.

Article 36. Hours for wholesale men. Forty (40) hours shall constitute a week's work for routemen, routeriders, special delivery men and extra men serving non-commission wholesale trade. Each man's time to report and time to unload shall be scheduled so that he can finish his day's work in eight and one-half (8½) hours after he commences his day's work. Each man's time shall be recorded on time card by time clock when he reports and finishes his day's work in make-up room, starting time to be governed by schedules. Non-commission routemen to be allowed to pull in when their routes are properly served. One-half hour shall be allowed for lunch.

Article 37. Wholesale men to receive time and one-half for all hours worked in excess of 40 hours in any week. Overtime after 42½ hours. Overtime on basis of 40 into base pay. In case of breakdown, accident or delay beyond his control, the Union agrees that the Employer shall be

allowed reasonable tolerance in the enforcement of these provisions for overtime compensation.

Article 38. Members working forty (40) hours per week; if requested by the Employer to drive trucks to safety lane for inspection must do so within forty (40) hours scheduled work week.

Article 39. Hours of Delivery—Retail Deliveries. On week days, loading to begin as required; deliveries to start at 7:00 A.M., except on Sundays and legal holidays, except Lincoln's or Washington's Birthday and Armistice Day, when vehicles shall start any time in the morning that business may require. Unloading facilities to be ready at 1:30 P.M. week days and 9:00 A.M. on Sundays or holidays. Vehicles to be scheduled off the street 3:30 P.M. week days and 12:00 P.M. on Sundays and holidays.

Wholesale Deliveries: Deliveries by store trucks to be the same as retail on week days. All wholesale and store trucks to be scheduled off the street no later than 1:00 P.M. on Sundays and holidays. Trade in the territory bounded on the north by Chicago Avenue on west by Halsted Street, on south by Roosevelt Road (both sides of these streets are included) shall not be regulated by the rules prescribed above, but shall be supplied from any time in the morning that the business may require until 12:00 o'clock noon. All vehicles must be out of this district by 1:00 P.M.

All questions pertaining to hours of seasonal changes in delivery shall be referred to a committee from the Employers and the Union. The decision to be binding on both parties to this contract, except in case of breakdown or delay beyond their control.

The Employer agrees that he will enforce the provisions of this Article except in case of breakdown, accident or delay beyond his control.

Article 40. The Union agrees at all times, as far as in its power, to further the interests of the Employer. It is mutually agreed between the parties herein named, that the customers and consumers of the Employer belong to and are a part of the assets and good-will of the said milk dealer; that the driver solicits, serves and sells such customers and consumers in a representative capacity only and if for any reason whatsoever any member of the said

Union terminates his employment or is discharged or dismissed or for any reasons said employment ceases and is terminated, it is understood and agreed that any such driver or his agent shall not call upon, solicit, sell or interfere with or divert the customers or consumers formerly served by him on behalf of his former Employer, for a period of two years (2) from the date of his termination of employment. It is further understood that if a driver were to resign as a member of the Union, in no event would this abrogate the agreement until the space of two years (2) from the date of his resignation or discharge has elapsed. The Union shall not be required to pay any costs of any proceedings relative to procuring of any order restraining a driver from stripping his route. The party of the first part shall advance any and all costs necessary relative thereto and party of the second part agrees to abide by Article 40. The provisions of this article shall be suspended in the event of and during a general strike by or lock-out of the members of the Union.

[fol. 1192]

| Article 41. Wage Scale. Overtime<br>Rating for 1953 | May 1,<br>1953 | May 1,<br>1954 | Stright<br>Time Rate<br>1953 | Overtime<br>Rate<br>1953 |
|---|----------------|----------------|------------------------------|--------------------------|
| Retail Route Men .....                              | \$ 92 00       | \$ 95 00       | \$2 30                       | \$3 45                   |
| Inexperienced Men .....                             | 91 00          | 94 00          | 2 27½                        | 3 41                     |
| Route Foremen .....                                 | 104 00         | 107 00         | 2 60                         | 3 90                     |
| Ass't Route Foremen .....                           | 99 00          | 102 00         | 2 47½                        | 3 71                     |
| Solicitors or Adjusters .....                       | 99 00          | 102 00         | 2 47½                        | 3 71                     |
| Store Route Men .....                               | 92 00          | 95 00          | 2 30                         | 3 45                     |
| Com. Wholesale Route Men .....                      | 93 50          | 96 50          | 2 34                         | 3 51                     |
| Special and Extra Route Men .....                   | 91 00          | 94 00          | 2 27½                        | 3 41                     |
| Truckers and Van Day Men .....                      | 97 00          | 100 00         | 2 42½                        | 3 64                     |
| Truckers and Van Night Men .....                    | 98 00          | 101 00         | 2 45                         | 3 68                     |
| Tank Day Men .....                                  | 97 00          | 100 00         | 2 42½                        | 3 64                     |
| Tank Night Men .....                                | 98 00          | 101 00         | 2 45                         | 3 68                     |
| Noncom. Wholesale Men .....                         | 109 00         | 112 00         | 2 72½                        | 4 09                     |
| Retail Store Solicitors .....                       | 104 00         | 107 00         | 2 60                         | 3 90                     |
| Noncom. Ass't Route Foremen .....                   | 114 00         | 117 00         | 2 85                         | 4 28                     |
| Noncom. Route Foremen .....                         | 119 00         | 122 00         | 2 97½                        | 4 46                     |

On May 1, 1954, an additional \$3.00 weekly wage increase shall be put into effect.

Article 42 (A). Commissions to be figured at 75¢ per hundred, over 1733 points on seven day routes, over 1486 points on six day routes, and over 1238 points on five day routes, up to 4,000 points per week. Over 4,000 points, 90¢ per hundred.

Commissions on butter and oleomargarine sold at retail

home delivery shall be two (2) points per pound and on eggs, two (2) points per dozen. Commission on cheese, 1¢ per jar of one pound or less; in larger quantities, 1¢ per pound at retail. The commission on cheese must be paid over and above the guaranteed salary.

Commission on butter on store routes shall be one cent (1¢) per pound. Same for oleo. Commission on eggs one cent (1¢) per dozen. Commission on cheese, one cent (1¢) per jar of one pound or less; in large quantities, one cent (1¢) per pound. This must be paid over and above the guaranteed salary.

(B.) A point of goods sold on retail wagons shall consist of one quart of milk, one pint of milk, four one-half pints of milk, three one-third quarts of milk, one quart of skim, one-half pint, or two gills of cream, one quart of buttermilk.

(C.) Full commissions shall be paid on schools served by either retail or wholesale routes. All half pints, or one-third quarts served by retail wagons to either schools or wholesale stops where they are not resold, can be figured,—four, one-half pints, or three, one-third quarts as one point.

(D.) All vending machines classed as retail,—four one-half pints as one point.

(E.) Commission on Commission Wholesale shall be 75¢ per hundred over 2400 points for the first 4000 commission points, then 90¢ per hundred.

(F.) Straight additional commission to be paid on goods not resold over 400 points per week.

(G.) Commission to be figured on goods for re-sale delivered on non-commission routes at 75¢ per hundred over 400 points up to 4000 points. Over 4000 points 90¢ per hundred.

(H.) Whenever a Foreman, Assistant Foreman or Extra-man is required to run a wholesale commission route, he shall receive sixty percent (60%) of the commission earned that day, or days he runs the route. Balance of the earned commission to be credited to regular drivers. Commission for this group to be figured on basis of month average.

(I.) All goods sold from retail routes to be classed as retail. Places that resell milk to be classed as retail.

(J.) All commissions to be paid not later than the fourth pay-day of the month.

(K.) Whenever employer employs assistant route fore-



men or foremen on non-commission wholesale routes they shall be paid \$5.00 and \$10.00 over the wage scale for non-commission wholesale men as set forth in Article 41.

Article 43. Truckers, Van and Tank men. Forty (4) hours shall constitute a week's work, of eight hours per day. Overtime to be paid after eight and one-half (8½) hours per day which includes one-half hour eating period at one and one-half times the basic rate. The Employer shall be allowed reasonable tolerance in cases of break-down or delay beyond the control of the Employer, in the enforcement of this Article. Men shall punch time-card by time-clock when he reports as scheduled and punch card when he finishes his day's work.

Seniority to apply on picking steady runs or starting time.

Article 44. All drivers of auto trucks who begin work at 4:00 P.M. or thereafter shall be considered night truck men. All drivers who begin work at 4:00 A.M. or thereafter shall be considered day truck men.

Truckers, van and tank men who work less than 4 hours on the night shift between 4:00 P.M. and 4:00 A.M. shall receive 50¢ per night. Those who work 4 hours or more during that period shall receive a bonus of (10%) per night.

Article 45. It shall not be a violation of this Agreement for members of Local 753 to refuse to work for an Employer at a plant where any person or persons delivering milk or dairy products to or from such plants are not members of Local 753 or refuse to become members within ten days.

Processor agrees to service only vendors in good standing with Union or those presenting an O.K. card signed by Secretary-Treasurer signifying intention to join.

Whenever a party of the first part claims the business of a vendor as his property, or where the party of the first part furnishes the vehicle for the use of a vendor, such vendor shall be classed as an employee and shall be paid the wages and commissions this contract calls for.

Processor shall pay \$3.50 per week to each vendor and to master vendors for each route operated as an allowance for advertising the sale of processors' products. Additional \$2.00 for second year.

Article 46. The Employer agrees that when members of the Union leave for Military Service, their seniority rights will be accumulative, crediting their period of service, and on return they will be given their positions if physically qualified to handle same. Application for reinstatement must be made within 90 days of date of honorable discharge.

Article 47—Pension-Severance—\$3.50 per week for all members and an additional \$5.00 per week for all routes over 12,000 points per week shall be paid by the employer into a separate fund for pension and severance benefits to members. This shall be jointly operated by a committee from the Union and the Employers as set forth in Supplemental Articles of Agreement and Milk Drivers-Milk Dealers Pension Severance Plan. The employer's liability under this article is limited to the payment of contributions as hereinabove set forth.

Article 48. This Agreement shall take effect as of May 1, 1953, and shall continue in effect until May 1, 1955, and from year to year thereafter unless written notice of a desire to cancel or modify the same is given by either party to the other not less than sixty (60) days prior to May 1st of any year. It is further agreed that negotiations continue until an agreement is reached or negotiations are broken off by either party.

Employers:

Union:

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President

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Secretary-Treasurer

[fol. 1193] IN UNITED STATES DISTRICT COURT, NORTHERN  
DISTRICT OF ILLINOIS, EASTERN DIVISION

[Title omitted]

Civil Action No. 51 C 947

FINAL PRE-TRIAL ORDER—The Borden Co.—December 16,  
1958

The Court, pursuant to Rule 16 of the Federal Rules of Civil Procedure, having directed the attorneys for the parties to appear before it for pre-trial conference concerning the evidence to be offered upon the reopening of this action; the Court having met with counsel for the parties from time to time; the Court having entered the Supplemental Pre-Trial Order of November 8, 1955, the Additional Pre-Trial Order of September 19, 1957, and the Rebuttal Pre-Trial Order of December 16, 1958; and plaintiff and defendant The Borden Company (hereinafter called "Borden") having come to further agreements in the course of said conferences:

[fol. 1194] It is Ordered:

1. This Order is a supplement to the Pre-Trial Order entered on March 4, 1953, the Supplemental Pre-Trial Order entered on November 8, 1955, the Additional Pre-Trial Order entered on September 19, 1957, and the Rebuttal Pre-Trial Order entered on December 16, 1958:

2. This Order pertains only to plaintiff and defendant Borden;

3. The introduction of evidence under any and all of said agreements is made without agreement as to the weight of such matters and subject to the objection reserved by the plaintiff and the defendant Borden that the evidence sought to be introduced is immaterial or irrelevant, and the same reservation and objection shall apply to all stipulations, agreements and admissions of fact contained in this Order;

4. This Order and all matters herein referred to and all admissions of fact and agreements with respect to the further trial of this action shall be used for no other purpose

than the trial of this action and are made solely for the purposes of this trial.

5. All schedules referred to in this Order may be offered in evidence without further proof or authentication.

[fol. 1195] 1. Additional Agreements as to Facts, Exhibits and Schedules

1. The routemen and relief drivers described in paragraphs 128 and 129 of the Additional Pre-Trial Order were at all times during 1954 and 1955 under standing instructions to make the regular stop at each store customer location on their route, irrespective of whether or not they anticipated that the store customer would purchase any fluid milk products at that location.

2. A wholesale route arranged as described in paragraphs 135 and 136 of the Additional Pre-Trial Order, is readjusted whenever the addition of new store customers make it difficult to serve the entire route within the time requirements of the union contract and the time needs of the store customers.

3. Thomas B. Gilmore, if called to testify on behalf of Borden, would testify as follows:

(a) That he is an attorney duly licensed to practice law in the State of Illinois and has been so licensed since 1927; that continuously since 1938 he has acted as attorney for the Associated Milk Dealers, Inc., and in such capacity has represented the Milk Dealers in the Chicago marketing area in their negotiations with the Milk Wagon Drivers' Union Local 753, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, in negotiations leading up to the Collective Bargaining Agreements which have been entered into from time to time between said Union and said Milk Dealers.

[fol. 1196] (b) That the Commissions payable on store routes were established for the purpose of curtailing the size of store routes and preventing the consolidation and reorganization of mixed routes.

(c) That in every labor negotiation between the Milk Wagon Drivers' Union and the Associated Milk Dealers, Inc., the representatives of the Union have, as part

of their demands, requested increases in the rates of commission payable to drivers on store routes; that during the course of said negotiations, officers of the Union have made frequent public statements to the effect that the purpose of such demands for increases in the rates of commission payable to drivers on store routes was to keep the size of store routes within limits which can be safely served by a route man in a normal working day with due regard to the health, welfare and safety of the route man; that in addition to such public statements, in the course of such negotiations, officers of the Union have repeatedly explained that the purpose of demands for increases in the rates of commission payable to drivers on store routes was to create and preserve a maximum number of jobs for Union members; that said Union officers have repeatedly emphasized that said demands were in furtherance of the objective of obtaining what the Union regards as an equitable pay scale for its entire membership.

(d) That in his opinion, based on his experience in labor negotiations, the commission payments are the economic equivalent in the dairy industry in the City of Chicago of other forms of premium pay, such as time and a half for overtime, which are, in general, designed to spread the available jobs among the maximum number of members of the labor force.

The plaintiff moves that the foregoing testimony of Mr. Gilmore be stricken on the following grounds and for the following reasons: 1. raises collateral issues; 2. not the best evidence; 3. argumentative; 4. incompetent; 5. irrelevant and immaterial.

4. Schedule XXXV, "Summary of General and Administrative Expenses of Borden's Chicago Milk Division Main [fol. 1197] Office for Twelve Month Period Ending June 30, 1955," shows by item of expense the total cost for the year of such general and administrative expenses, and the average weekly cost thereof. The Schedule also shows the average weekly points sold by the Chicago Milk Division for the twelve month period, the average weekly wholesale points of the Irving Park and Englewood Branches, and the percentage of such points of these two branches to the

total sold by the Chicago Milk Division. The Schedule then shows the average weekly general and administrative expenses applicable to the wholesale points sold by the Irving Park and Englewood Branches, less such expenses already covered in paragraphs 249, 254, 257, 258 and 260 of the Additional Pre-Trial Order.

5. During the year 1955, the representation of Borden with the chain stores was the responsibility of O. N. Koenig, W. N. Waterstreet and H. R. Fagerson. The total compensation of these three men and their secretaries for the year 1955 was \$74,777.47. During the entire year W. N. Waterstreet was President of Borden's Chicago Milk Division, and his salary and that of his secretary were applicable to the Chicago Milk Division. From January 1 to March 15, 1955, H. R. Fagerson was Vice President of the Chicago Milk Division, and his salary and that of his secretary for that period were applicable to the Chicago Milk Division. From March 15 to December 31, 1955, H. R. Fagerson was [fol. 1198] District Sales Director of Borden's Chicago Central District, and during the entire year O. N. Koenig was District Chairman of the Chicago Central District. The Chicago Milk Division was one of seven divisions comprising the Chicago Central District. The total expense of the Chicago Central District applicable to the Chicago Milk Division in the Chicago area was 18.52 per cent of the total expense of the entire Chicago Central District. When the salaries of O. N. Koenig and H. R. Fagerson and their secretaries for these periods are allocated to the Chicago Milk Division on the basis of this percentage, the total compensation of O. N. Koenig, W. N. Waterstreet, H. R. Fagerson and their secretaries applicable to the Chicago Milk Division for the year 1955 was \$37,015.26.

6. Schedule XXXVI, "Summary of Trend of Borden's Independent and Chain Store Business in the Chicago Area," in part includes information found in paragraph 153MD of the Additional Pre-Trial Order and paragraph 18 of the Rebuttal Pre-Trial Order. The Schedule shows the trend from 1947 through 1956.

Enter:

Campbell, Judge.

Dated: December 16, 1958.

[fol. 1199]

## SCHEDULE XXXV

Summary of General and Administrative Expenses of Borden's Chicago Milk Division Main Office Covering 12 Month Period Ended June 30, 1955

| Account No.     | Description             | Total<br>12 Month<br>Ended<br>June 30,<br>1955 | Average<br>Per<br>Week |
|-----------------|-------------------------|--|------------------------|
| 1               | Salaries and Wages      | \$259,341 15                                   | \$ 4,987 33            |
| 101             | Office Expense          | 21,072 03                                      | 405 23                 |
| 102             | Telephone and Telegraph | 18,276 59                                      | 351 47                 |
| 109             | Legal Fees and Expenses | 9,586 37                                       | 181 35                 |
| 110             | Gifts and Donations     | 11,450 46                                      | 220 20                 |
| 111             | Traveling Expense       | 8,240 64                                       | 158 47                 |
| 115             | Fees and Dues           | 27,518 65                                      | 529 20                 |
| 138             | Tabulating Service      | 29,857 71                                      | 574 19                 |
| 200-201-204     | Repairs                 | 4,027 16                                       | 77 15                  |
| 227-228-229-230 | Insurance               | 10,517 11                                      | 202 25                 |
| 233             | Fees—Fidelity Bonds     | 4,282 61                                       | 82 86                  |
| 236             | Taxes—Real and Personal | 3,453 34                                       | 66 41                  |
| 240-241         | Depreciation            | 8,745 00                                       | 168 17                 |
| 260             | Laundry                 | 1,509 10                                       | 29 02                  |
| 262             | Light, Heat and Power   | 11,637 26                                      | 223 79                 |
| 266             | Building Services       | 33,300 92                                      | 640 40                 |
| 319             | Circle Publication      | 12,484 68                                      | 240 09                 |
| 106-114-137-225 | } Miscellaneous         | 22,993 50                                      | 442 20                 |
| 254-295-298-311 |                         |  |                        |
| 312-313-314-315 |                         |  |                        |
| 318             |                         |  |                        |
| 149-265-302     | Transfers—Net           | 25,339 05                                      | 487 29                 |
|                 | Total                   | \$523 633 33                                   | \$10,069 87            |

|   |             |
|---|-------------|
| Average Weekly Points of Chicago Milk Division  | 3,405,496   |
| Average Weekly Wholesale Points of Irving Park and Englewood Branches   | 1,716,180   |
| Percent of Points of Irving Park and Englewood Branches to Points of Chicago Milk Division  | 50.39%      |
| Portion of General and Administrative Expense Applicable to Irving Park and Englewood Branches: (\$10,069.87 x 50.39% = \$5,074.21) | 5,074 21    |
| Less the Direct Costs Included in Paragraphs 249, 254, 257, 258 and 260 of the Additional Pre-Trial Order                           | 746 62      |
| Average Weekly Indirect General and Administrative Expenses Applicable to Irving Park and Englewood Branches                        | \$ 4,327 59 |



[fol. 1201] IN UNITED STATES DISTRICT COURT, FOR THE  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

[Title omitted]

Civil Action No. 51 C 947

SUPPLEMENTAL PRE-TRIAL ORDER—BOWMAN CO.—  
December 16, 1958

The Court, pursuant to Rule 16 of the Federal Rules of Civil Procedure, having held pre-trial conferences from time to time, and the plaintiff and the defendant Bowman Dairy Company (hereinafter referred to as "Bowman") having come to certain agreements in the course of said conferences,

It is Ordered:

1. This order is a supplement to the Supplemental Pre-Trial Order entered in this cause on November 4, 1955, the Supplemental Pre-Trial Order entered on December 23, 1957, and the Plaintiff's Rebuttal Pre-Trial Order as to Bowman Dairy Company, entered contemporaneously herewith.

2. The reference on the first page of the Supplemental Pre-Trial Order entered on December 23, 1957, to a prior pre-trial order "of November 8, 1955" should be and hereby is corrected to refer to the prior pre-trial order of November 4, 1955.

[fol. 1202] 3. The provisions of paragraphs 2, 3 and 4 of the Supplemental Pre-Trial Order entered on November 4, 1955 are applicable to this supplemental pre-trial order.

Agreements of Fact Between Plaintiff and the  
Bowman Dairy Company

1. Robert F. Elrick, if called to the stand to testify on behalf of the defendant Bowman Dairy Company, would testify as follows with respect to the mail survey described in paragraphs 7 through 9 of plaintiff's rebuttal pre-trial

order as to Bowman Dairy Company, and the rebuttal exhibits contained in Folder A, submitted therewith.

(a) He is the same Robert P. Elrick referred to in paragraphs 21 through 26 of the supplemental pre-trial order entered on December 23, 1957, and is still the president of Elrick & Lavidge, Inc.

(b) Under his personal direction and supervision, the staff of Elrick & Lavidge, Inc. has studied the results of a mail survey conducted by the plaintiff, and has re-examined the personal interview survey originally conducted by Elrick & Lavidge, Inc. in the light of the results of plaintiff's mail survey. The purpose of this study and re-examination was to further measure, if possible, the extent of customer competition, if any, among the six stores originally selected by the plaintiff.

(c) An analysis of the actual responses to plaintiff's mail questionnaire shows that competition among the sample stores is extremely limited. For example, out of the 155 responses to the questionnaires mailed to persons who were interviewed at the A & P store at 2601 West 51st Street, only two persons indicated that they also made purchases from Psomakos at 2416 West 47th Street. None of the responses to questionnaires mailed to persons interviewed in front of Goldenstern's Market at 427 West 69th Street indicated any purchases from the Kroger Store at 7260 South Went-[fol. 1203] worth. As a result of a study of all of the data contained in the mail responses pertaining to the six selected sample stores, it is my considered opinion that the extent of possible customer competition among the sample stores is practically negligible.

(d) In my opinion the results of the plaintiff's mail survey do not in any way affect the conclusions drawn by Elrick & Lavidge, Inc. in the original personal interview survey. The analysis of plaintiff's mail survey conducted by the Elrick & Lavidge, Inc. staff confirms the previously expressed opinion that the extent of possible customer competition among the sample stores is practically negligible.

2. A. J. Bergfeld, if called to the stand to testify on behalf of the defendant Bowman Dairy Company as a rebuttal witness would testify as follows:

(a) He is the same A. J. Bergfeld referred to in paragraphs 27, 33, 34 and 35 of the supplemental pre-trial order entered on December 23, 1957; that he has studied the proposed testimony, and the depositions of Messrs. Woolley, Taggart, Sawyer and Taylor, and has, with the assistance and cooperation of R. G. Havemeyer, a member of his staff with Stevenson, Jordan & Harrison, Inc., analyzed the exhibits submitted on behalf of the plaintiff in connection with the plaintiff's rebuttal pre-trial order as to Bowman Dairy Company.

(b) He has made a further analysis, and has given further serious consideration to the subject of central office overhead discussed in paragraph 35 of the supplemental pre-trial order entered on December 23, 1957, and is still of the opinion that the views expressed in said paragraph are correct, specifically that (1) if central office overhead had been studied in great detail and charged directly to transactions with corporate chain outlets and independent stores, that the effect on costs would have been minor, and (2) the result of such a study would have charged a proportionately greater share of such expenses to independent stores and thereby created an even greater cost difference than was submitted in the original studies.

[fol. 1204] That during his experience of nearly eleven continuous years of consultation service with Bowman Dairy Company, he has observed their market difficulties, the nature and subject of their departmental and corporate meetings, and the problems towards which executives direct their time. He has observed that a greater proportional share of their time and efforts are expended on problems and conditions surrounding dealings with independent stores than with corporate chains.

That in its calculations, Bowman Dairy overcharged chain store transactions by charging a portion of solicitors' cost to them, although in fact these men have no selling or credit contact with those stores. This point

is emphasized here because one of plaintiff's experts (Mr. Sawyer) did not understand it.

(c) That the time to "Collect" and "Delay to Collect", spent by the drivers on the route at independent stores, which plaintiff excluded in its rebuttal calculations (see plaintiff rebuttal table 15, footnote 9), should not have been excluded from the cost calculations because this is truly an additional function which is performed for independent customers. In his opinion, the cost of billing and collection at the distribution division office, Elston Division, for example, and at the company's central office is no greater per point delivered for chains than for independents.\* Accordingly, the cost of this additional route collection function ("Collect" and "Delay to Collect") should be charged to independent stores.

At the distributing division office a record is maintained of sales to each store; in the case of independents this is done for subsequent discount calculations which are computed for a monthly rebated discount, and in the case of chains this is done for a weekly summary bill. In his opinion, the cost of maintaining such records in the office is no greater for chain store sales than for independent store sales.

At the company's central office, the calculation for each independent store requires total point valuation and total dollar purchases of deliveries during the month, which is information provided to it by the distributing division. Clerks at the central office determine the discount rate for each store, extend it by the dollar value of purchases, and issue a discount check.

[fol. 1205] The company's central office also prepares a weekly summary bill from sales data prepared by the distributing division for each of the corporate chain groups served by the company.

To illustrate the relative amount of work involved in the central office section, the following data is submitted:

|  | March,<br>1955 | December,<br>1955 |
|--|----------------|-------------------|
| No. of corporate chain bills issued            | 15             | 12                |
| No. of rebate checks issued to<br>independents | 3,266          | 1,860             |

[fol. 1200]

# SCHEDULE XXXVI

Summary of Trend of Borden's Independent and Chain Store Business in Chicago Area

| Year | Number of<br>Independent<br>Stores Served | Volume of Milk<br>Delivered to<br>Independent Stores<br>Expressed in<br>Percentage | Number of Chain<br>Store Locations<br>Served | Volume of Milk<br>Delivered to<br>Chains Expressed<br>in Percentage # | Percent of Chain<br>Store Volume to<br>Total Volume of<br>Chicago Milk<br>Division Sales<br>to all Customers |
|------|---|--|--|---|--|
| 1947 | 2,200                                     | 100.00%  | 305  | 100.00%   | 16.70%   |
| 1948 | 2,338                                     | 105.84   | 298  | 110.48  | 17.98  |
| 1949 | 2,267                                     | 102.63   | 290  | 131.83  | 20.72  |
| 1950 | 2,258                                     | 105.22   | 283  | 141.85  | 21.37  |
| 1951 | 2,113                                     | 95.65  | 281  | 142.80  | 21.20  |
| 1952 | 1,925                                     | 87.14  | 277  | 151.00  | 22.35  |
| 1953 | 1,728                                     | 78.92  | 274  | 176.00  | 26.72  |
| 1954 | 1,520                                     | 68.24  | 256  | 192.20  | 29.52  |
| 1955 | 1,357                                     | 60.19  | 110  | 164.30  | 26.99  |
| 1956 | 1,224                                     | 54.20  | 112  | 97.5  | 16.21  |

Note: Year is given as of December 31. Actual sales figures on which this table is based have been revealed to counsel for plaintiff but because of the confidential nature of the figures, volume sales figures are expressed in appropriate percentages using 1947 as the basic year.

He would also state that company officials have pointed out that there is no delinquency or credit problem with the corporate chains and that there is this problem with independent stores and that it requires time of the division manager, assistant managers, and solicitors to keep it within reasonable limits.

As a result of this consideration of office functions relating to billing and collection, it is his opinion that this functional cost is no greater for chains than for independents, either in total or per point, and that the additional time and cost for collecting cash from independents on the route was properly included in the Bowman studies and should have been included in the plaintiff's calculations.

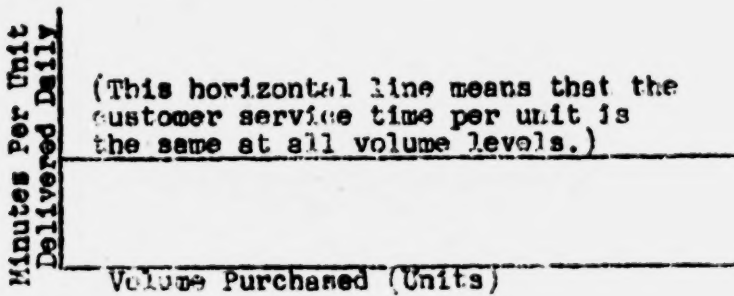
(d) That he does not believe that it is sound to divide the delivery function into a transportation segment and a service segment, and to treat the two segments separately, but that even if the plaintiff's principle of treating the transportation segment separately were acceptable, that nevertheless the plaintiff's method of allocating transportation costs was incorrect. The plaintiff has allocated transportation costs to products and thence to customers on a space basis and has used the "point" to represent a unit of space, although plaintiff's witnesses have stated that a weight basis might be equally valid. In plaintiff's rebuttal table S G, those costs which plaintiff termed transportation costs were divided by the total number of points delivered to determine transportation cost per point, and were then charged to various size stores in plaintiff's rebuttal table 16 A and 16 B at that unit cost. In [fol. 1206] order for such a refined method of allocating transportation costs to be correct, the space occupied per point, or the weight per point, would have to be uniform for all products; otherwise some products would be charged a disproportionate share of those costs and the customers buying overcharged products would suffer accordingly. The space and weight per point vary widely for different fluid milk products, as is shown by the attached Table 161.

(e) That he and his staff engineer, R. G. Havemeyer, have reviewed the plaintiff's method of deriving the

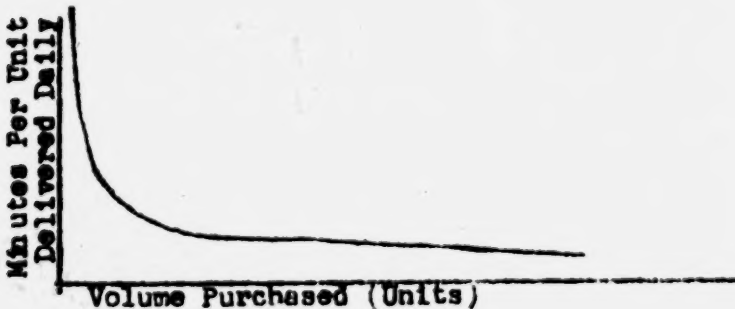
"customer service time per unit delivered" for independent stores as shown in plaintiff's rebuttal chart I A, with supporting data tabulated in plaintiff's rebuttal table 10 A.

Plaintiff has used a data calculation method which is the most favorable method that could have been used for the plaintiff's purposes, but which is an incorrect representation of "customer service time".

The defendant used a customer service time which was the same per unit delivered for all size stores. A graphic presentation would be a straight horizontal line on the following type of chart:



The plaintiff said in effect that the "customer service time per unit" varies by size of store and that it is less per unit for a large volume purchaser than for a smaller one. Graphically, it would appear as follows:



[fol. 1207] The plaintiff's method of arriving at this conclusion is described in the following paragraphs.

During the 1949 time studies, which are the basis for the source of this data, not all stores asked for



and received customer service on all days that the study was made. This fact is demonstrated by plaintiff's rebuttal chart II A and Table 10 A.

In view of the inconsistent requests for customer service, plaintiff factored the data plotted from the time studies (plotted on plaintiff's chart I A) by the ratio 3.30/5.48, in order to derive its "correct customer service time" for any size store. The 3.30 is the average customer service time per unit as computed by the defendant. The 5.48 represents the average customer service time per unit only for those stores actually receiving customer services, as computed by the plaintiff (see plaintiff's table 10 A).

The significant point is that the plaintiff factored every point of his plotted graph by this same ratio to derive the Customer Service curve which he used in subsequent calculations. The approach is not valid unless all customers, regardless of size, receive Customer Service with equal frequency. Plaintiff's rebuttal chart II and table 11, however, demonstrate that this is not true. In other words, during the several days of time studies, a greater proportion of large size stores received Customer Service. The proportion of stores receiving Customer Service was not the same for all size categories, although the plaintiff's calculations assume that it was the same. This difference in proportion was very large. For example, plaintiff's table 11 shows the following:

[fol. 1208] 1. Proportion of stores receiving Customer Service on *all* sample days.

|                         |                |
|-------------------------|----------------|
| 0- 5 points per day—    | 25% of stores  |
| 50- 60 points per day—  | 62% of stores  |
| 200-300 points per day— | 93% of stores  |
| 300-400 points per day— | 100% of stores |

\*2. Proportion of stores receiving Customer Service on *no* sample days—reverse trend of above.

|                         |               |
|-------------------------|---------------|
| 0- 5 points per day—    | 63% of stores |
| 50- 60 points per day—  | 30% of stores |
| 200-300 points per day— | 6% of stores  |
| 300-400 points per day— | 0% of stores  |

By using the same factoring ratio ( $3.30 \div 5.48$ ) for all customers, plaintiff did not take into account the actual experience which its own data tabulations disclose. As large independent stores receive customer service a high proportion of time, the observed time data should not have been factored by the ratio  $3.30 \div 5.48$ , which is 60.2%, but by the ratio actually experienced; as shown previously this was 93% for 200-300 point stores and 100% for 300-400 point stores. By factoring time data by the correct ratio, the customer service time per unit for large stores would have been a greater value than the plaintiff calculated. Conversely, small volume stores, because they receive customer service a small proportion of time (Example: 0.5 points, 25% proportion) would have had a lower value than the plaintiff calculated.

That he has made this type of calculation, using the data as plaintiff tabulated it. The attached table 101 is a recalculation of the data appearing in plaintiff's rebuttal table 10 A. The effect of this recalculation is shown graphically in attached chart 103. The points designated X are the result of this calculation. The drawn curve is the result of plaintiff's calculations and is the curve used in subsequent plaintiff tables to compute customer service time.

The effect of this calculation is very significant. At volumes higher than 70 units, the calculated value is higher than the plaintiff's curve in every instance except one; at volumes lower than 45 units, the properly [fol. 1209] calculated curve is lower than the plaintiff's curve in every instance. The plaintiff's curve does not fit the properly calculated points. In fact, by inspection, it is apparent that a straight, almost horizontal, line would fit the X points.

Using the same detailed mathematical technique as employed by Mr. Woolley, the line which fits these points best is:

$$\bar{M} = 5.691 \cdot U (-.11842)$$

Mathematical tests show that this relationship is real and significant ( $r = -.485$ ,  $t = 2.482$ ).

The equation computed by Mr. Woolley with his method is

$$\bar{M} = 13.04 \cdot U(-.34164)$$

In comparing the two equations, the significance of the constant (Mr. Woolley = 13.04, Mr. Bergfeld = 5.691) is that Mr. Bergfeld's line crosses the vertical axis at a much lower value, namely, at 5.691. The significance of the exponent (Mr. Woolley =  $-.34164$ , Mr. Bergfeld =  $-.11842$ ) is that Mr. Bergfeld's line descends at a much slower rate, or has a smaller slope. In non-mathematical language, the line computed by Mr. Bergfeld, using the data arranged by Mr. Woolley, is much closer to a straight horizontal line.

Although the proper handling of data even as presented by Mr. Woolley would be close to a straight horizontal line, in Mr. Bergfeld's opinion the most realistic measure of customer service would not be to make a separate calculation at each volume level as done by Mr. Woolley and in the preceding description, because there is inconsistency in the acceptance of customer service between different size stores, as indicated by plaintiff's chart II, and there is also inconsistency at particular stores and groups of stores as to the acceptance of customer services. Instead, a more realistic approach, which is the method used by Mr. Bergfeld, would be to use a general average (Note: in graphic terms this would be a straight horizontal line); that is, divide the total number of customer service minutes recorded, by [fol. 1210] the total number of units delivered to all stores, whether or not the stores actually receive customer service on the days they were studied. In Mr. Bergfeld's opinion, an attempt to achieve a higher degree of mathematical exactitude on this point is futile because the conditions are not static.

(f) That he has reviewed the plaintiff's data pertaining to (1) the number of fibre and glass containers delivered daily, and (2) the percentage of glass containers to total containers delivered daily; this is described in paragraph 24 of plaintiff's rebuttal pre-trial

order. The data is compiled in plaintiff's rebuttal tables 12A, 12B, 13A, and 13B, and is used to plot plaintiff's rebuttal charts III A, III B, IV A, and IV B.

He has tabulated plaintiff's data from the above tables, without making any revisions or rearrangements, as shown in the attached table (Table 104). This table shows that in the volume range of 0-200 points, that there was 98.1% (823 stores) of the independent stores and 7.6% (5 stores) of the chain stores, and that in the volume range over 200 points that there was 1.9% (16 stores) of the independent stores and 92.4% (61 stores) of the chain stores.

Although 92.4% of the chain stores recorded in plaintiff's study purchased more than 200 points and 98.1% of the independent stores purchased less than 200 points, and therefore practically no overlap of store size, plaintiff has projected the data for independent stores upward through the entire chain store volume range, and conversely projected chain store data downward through the entire independent store range.

(g) That he and his associate, Mr. R. G. Havemeyer, have reviewed Mr. Woolley's data, calculations and charts pertaining to the relationship between the number of containers delivered and the number of points delivered to chains and independents (plaintiff's rebuttal table 13 A and 13 B and charts III A and III B). These charts state that in the higher volume ranges, chain store sales require more containers than independent store sales at the same point volume. As this is [fol. 1211] not easily apparent from plaintiff's charts, the data and lines from plaintiff's charts III A and III B have been plotted on to one graph (see attached chart 105).

The record does not suggest any reason why an independent store doing a given volume of business should use a different number of containers than a chain store doing the same volume of business. Such a difference could not exist unless the customers patronizing one of them purchased a larger share of their fluid milk products in larger containers than the customers of the other.

Based on his knowledge of market conditions in the

Chicago Area, he does not believe there is any reason why customers of independent stores should buy any greater share of their dairy products in gallon or half-gallon containers than customers of chain stores. However, he does consider it likely that small stores of the delicatessen type may sell relatively more single-point containers (quart of milk, pint of cream, etc.) and relatively fewer multiple point containers (gallons, half-gallons, etc.) than the large "super-mart" type stores.

The data which Mr. Woolley has summarized on charts III A and III B indicates that small stores use relatively more containers than larger stores.

Thus plaintiff's tables 12 A and 13 A show that 492 stores (54.4% of total) averaging 50 points per day or less, handled a total of 11,749 points and a total of 9,045 containers, or an average of 77.0 containers for every 100 points. Plaintiff's tables 12 B, 13 A and 13 B show that 413 stores (including both chains and independents), averaging more than 50 points per day, handled a total of 68,566 points in 45,607 containers, or an average of 66.5 containers for every 100 points.

This common method of computing an average can be expressed in graphic and mathematical terms by the same type of charts and exponential formulae<sup>1</sup> as Mr. Woolley used in Charts III A and III B. The formula [fol. 1212] for stores in the 0-50 range would be  $N = 0.770 \cdot V(1.000)$ , and the formula for stores in the volume range over 50 points per day would be  $N = 0.665 \cdot V(1.000)$ . A chart containing two lines, one for small volume stores and the other for large volume stores, drawn from these two formulae, is attached as Exhibit 106.

He would point out that the lines on Exhibit 106 do not extend beyond the dots summarizing the basic data, which is in contrast to Chart 108 (which combines plaintiff's charts III A and III B). He would note on Chart

<sup>1</sup> Explanation: In the general equation  $N = \text{constant} \cdot V(b)$  where the variable  $V$  is raised to the power  $b$ ,  $b$  is called the exponent. If the exponent  $b = 1.000$ , the equation can be more simply written  $N = \text{constant} \cdot V$ .

105 that the difference in the slope of the two lines is used to indicate a difference between chains and independents, and that it is only at the high volume ranges that the lines, as extended, indicate that the number of containers purchased by chains is significantly greater than the number purchased by independents. Plaintiff's data shows no experience for independent stores in the high volume ranges, yet plaintiff extends the line for independent stores to double the volume actually experienced and recorded for them in plaintiff's test data (see plaintiff's chart III A and attached chart 105), and it is in this volume range that plaintiff claims that chain stores have a disadvantage on this particular point.

In chart 106, using the plaintiff's sampling data, Mr. Bergfeld has assumed a simple average of 77.0 containers for every 100 points sold by stores at volume levels of 50 points or less, and a similar simple average of 66.5 for larger stores. The exponential equation for each of these two lines uses the exponent "1.000", and it will be noted that the two lines on Chart 106 are parallel.

The difference in the slope of the lines on the plaintiff's charts III A and III B (our chart 105) would be eliminated if the exponents in plaintiff's two exponential equations were "1.000" instead of ".92" and "1.046". Mr. Woolley has acknowledged (Deposition Tr. 104, 106) that either exponent could change as much as 5% by chance variation alone, which could raise the former to .965 and reduce the latter to 1.000 or even below. Mr. Bergfeld would farther point out that an error or poor judgment in (1) selecting the sample route books, (2) recognizing whether a customer is a chain store, independent store or restaurant, (3) recording data, or (4) calculating with the data, could affect the exponent significantly. These factors could bring both exponents to 1.000 and cause the two lines to be parallel. He would point out that the changes which Mr. Woolley himself made between the first calculation of the exponential equation, and his final, corrected submission, were both in the direction of an exponent of 1.000, and were almost as significant

as the difference in the slope of the two lines which Mr. Woolley still finds, and that the change was caused by incorrectly recognizing less than half a dozen stores in the original computation.

If in fact the relationship between the number of points and the number of containers for all stores is a simple average, and the precise exponent in the exponential equations describing the relationship is 1.000, it is his judgment that the chance that any computation of the mathematical formula to the sixth decimal place, using a sample of route book sales data, would produce the exact exponent of 1.000 is infinitesimal. Mr. Woolley has estimated that chance variation could produce an exponent with as much as a 5% variation in either direction—i.e., from .950 to 1.050. One of Mr. Woolley's formulae, for the particular sample he selected, is already within that tolerance—i.e., the exponent for the chain store equation as calculated by Mr. Woolley is 1.046. The exponent of the independent store equation for his sample, and per his calculations, is 0.92, which is close to the 5% tolerance limit of 0.95. Mr. Bergfeld believes that this chance factor, together with variations caused by other factors mentioned above, could account for the difference in the slope of the two lines on Chart 105.

It is his judgment that the slope of the line on plaintiff's chart III A, which is substantially affected by the data from delicatessen-type stores doing less than an average daily volume of 50 points, is not a realistic measure of the number of containers which large supermarket type independent stores may be expected to use in volume ranges over 250 points per day (the volume where plaintiff's two lines cross). In his opinion, plaintiff's data on independent stores at high volume levels is not sufficient to support the conclusion that there is any material difference between chain stores and large independent stores with respect to the number of containers used per point. There does appear to be a difference between chain and small independent stores, but that difference indicates a higher cost of serving independents.

Considering the data as a whole, Mr. Bergfeld is of



the opinion that the complex mathematics employed by Mr. Woolley does not warrant the conclusion that high volume chain stores use any more containers than independent stores at comparable volume levels, but merely indicates that the small stores (which happen to be independent) use relatively more containers than larger stores.

(h) He would also testify that he and his associate, Mr. R. G. Havemeyer, have reviewed the plaintiff's method of preparing charts relating to the ratio of glass containers to number of points delivered (plaintiff's rebuttal charts IV A and IV B). In his opinion the data on those charts is inconclusive and the curves drawn, particularly that on chart IV B, are not good representations of the plotted data.

He would also point out that there is little overlap of plaintiff's data as explained in paragraph 25(f) above, and that uniform class intervals for the data have not been maintained, although it is preferred procedure to do so.<sup>1</sup> The inconclusive nature of the data allows considerable latitude in plotting it and fitting curves to it.

He would demonstrate, for example, that the data for both chain stores and independent stores could be regrouped into the same class intervals, for both types of stores and plotted on one chart (see Table 107). A curve could also be fitted to these points (see Chart 108), which is different than those which the plaintiff drew, but which probably is no worse an approximation of the data than is shown in plaintiff's chart IV B. [fol. 1215] His general opinion is that the plaintiff's data is too inconclusive to warrant the statistical con-

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<sup>1</sup> For example, refer to plaintiff's table 12 A:

- a. Between 0 and 50 points, a class of stores has been established for every 5 points;
  - b. Between 50 and 100 points, a class of stores has been established for every 10 points; and
  - c. Between 100 and 200 points, a class of stores has been established for every 20 points.
- clusions drawn by Mr. Woolley on differences in the

glass container ratios between chains and independents for different size stores.

(i) That paragraph 35(e) of plaintiff's rebuttal pre-trial order is incorrect in indicating that plaintiff could not make the same type of cost analysis for each of the restaurant-type customers as plaintiff made in the store delivery analysis.

Information and data for such calculations was available and could have been provided upon request.

(j) That the attached table (Table 109) lists the usual quantity of merchandise in various size containers, as carried by a Bowman Dairy Company bulk wholesale driver in one "swing", when delivering to the restaurant, hotel, etc., type of customer.

A "swing" is one movement made by the driver when unloading merchandise from the delivery truck to the sidewalk or wheeled dolly, and from the wheeled dolly to a final destination spot on the customer's premises.

The information shown in this table was determined by observation and then reviewed and confirmed by the bulk wholesale division's (Central Wholesale Division) route foremen and managers.

As the table shows, the volume of merchandise carried in one movement ("swing") varies, depending upon the size of container involved. The cost of moving merchandise from the delivery truck to the final destination spot therefore is in part dependent upon the size of containers.

He would also point out that the defendant has recognized this variation and other significant delivery characteristics at each customer location in calculating the cost to deliver there.

The plaintiff's calculations, which are based on the incorrect assumption that the delivery cost per gallon of fluid milk products is the same for all products and for all container sizes, neglect this reason for cost differences; the results of those calculations are therefore incorrect. Indented sentence No. 4 on page 10 of Bowman Exhibit No. 42 (A Cost and Price Study of Certain Bulk Wholesale Customers Transactions) specifically explains this point.

[fol. 1216] (k) That with respect to the subject of commissions, that on the basis of information provided him by the executives of Bowman Dairy Company, he concluded that the commission payments to wholesale route drivers were comparable to other forms of premium pay employed in other industries for such matters as time and a half for over-time, or other types of premium pay sought by Union representatives for the purpose of maximizing the number of jobs available, rather than for the purpose of giving individual employees extra incentive to earn additional compensation, and that his treatment of the commissions in the same manner as the balance of the driver's wages is consistent with the treatment of other forms of premium pay in other industries, which is customarily employed as sound cost accounting technique. He is satisfied, after considering the comments of the witnesses submitted by the plaintiff, and further reviewing his own reasoning, that commissions are merely one element of an overall wage scale intended by collective bargaining agreement to be equitable to all Union members, and that commission payments should accordingly be treated for cost accounting purposes a part of the basic wage itself.

3. The attached record of routes  $\pm 129$  and  $\pm 1471$  (Tables 110 and 111) represent a three year history of the two routes which served C. Goldenstern at 427 West 69th Street and G. Psomakos at 2416 West 47th Street. This is a record of customers added to or dropped from these routes, provided by Bowman Dairy Company's South Division as it operated them.

The attached table (Table 112) is a record of the miles traveled by the trucks which served routes  $\pm 129$  and  $\pm 1471$  during each month of 1955.

The attached table (Table 113) is a record of the volume sold by routes  $\pm 129$  and  $\pm 1471$  on the first seven days of each month in 1955. This information was provided by Bowman Dairy Company's South Division; Route Books were the source of data.

Plaintiff used the data in table 13 A which represented the average percentage of glass containers delivered daily

for all divisions. This is the data in Column 2 below. It was [fol. 1217] used by plaintiff for the purpose of refuting some of defendant's statistics.

Each of the three store divisions had a different percentage than the average percentage. Columns 3 and 4 below show which division differed the most from that average, and the amount of difference. Source of all data is plaintiff's rebuttal table 13 A.

| Store Size Category | Average % of Glass Containers, 3 Store Divisions | Division Which Differed Most From Average | Amount of Difference |
|---------------------|--|---|----------------------|
| Column 1            | Column 2   | Column 3                                  | Column 4             |
| 0 under 5           | 18.46%   | South                                     | 40.7%                |
| 5 under 10          | 8.26   | South                                     | 38.6                 |
| 10 under 15         | 4.17   | Forest                                    | 59.0                 |
| 15 under 20         | 6.64   | Forest                                    | 5.3                  |
| 20 under 25         | 4.99   | Forest                                    | 37.7                 |
| 25 under 30         | 7.11   | South                                     | 43.6                 |
| 30 under 35         | 9.38   | South                                     | 26.0                 |
| 35 under 40         | 6.25   | Forest                                    | 50.1                 |
| 40 under 45         | 7.64   | Forest                                    | 42.5                 |
| 45 under 50         | 9.57   | South                                     | 11.3                 |
| 50 under 60         | 11.68  | Forest                                    | 7.3                  |
| 60 under 70         | 12.80  | South                                     | 23.4                 |
| 70 under 80         | 9.52   | Forest                                    | 69.9                 |
| 80 under 90         | 12.87  | South                                     | 14.4                 |
| 90 under 100        | 10.91  | South                                     | 34.9                 |
| 100 under 120       | 13.10  | South                                     | 7.5                  |
| 120 under 140       | 13.99  | Elston                                    | 30.9                 |
| 140 under 160       | 41.00  | Elston                                    | 22.0                 |
| 160 under 180       | 12.37  | Forest                                    | 80.4                 |
| 180 under 200       | 13.75  | Forest                                    | 56.7                 |
| 200 under 400       | 13.14  | South                                     | 16.8                 |
| 400 and over        | 20.34  | Elston                                    | 14.9                 |

[fol. 1218] 4. Ray Baer, if called to the stand to testify on behalf of the defendant Bowman Dairy Company, would testify as follows:

(a) That he is the Director of Industrial Relations for the Bowman Dairy Company, that he has been employed by Bowman Dairy Company continuously for over 29 years; and that on the basis of his experience with the Bowman Dairy Company he is thoroughly familiar with its delivery operations.

(b) That the commission payment provisions of the

Collective Bargaining Agreement with Local 753 of the Milk Wagon Drivers' Union were adopted at the request of the Union, and not by the Company; that in his opinion, and in the opinion of other executives of the Bowman Dairy Company, that the purpose of such provisions is not to provide an incentive for store route drivers to sell larger quantities of fluid milk products, but on the contrary, that such provisions are regarded by the dairy, by the drivers, and by the Union as being a method of defining an equitable wage scale, or more specifically, of providing a type of premium pay which is regarded in this industry as roughly the equivalent of time and a half for overtime, or other forms of premium pay which are ultimately desired by the Union for the purpose of providing the maximum number of jobs for members of the Union.

(c) That the Bowman Dairy Company store route drivers are not trained in salesmanship techniques to secure new customers; that a group of solicitors is maintained for this purpose, while store route drivers are expected only to maintain friendly customer relationships through adequate and satisfactory delivery services. In the opinion of the Bowman Dairy Company management, this specialization of labor provides the most efficient use of the route driver's time. The diversion of route driver's time from the performance of delivery services which they are employed to perform, to solicitation or salesmanship would be an inefficient and uneconomical use of time, and therefore contrary to management policy.

[fol. 1219] (d) Although it is conceivable that some drivers may exert some influence on the owners of independent stores as to the volume of fluid milk products which may be delivered to them at specific times, they have no opportunity to exert any influence whatsoever on managers of corporate chain outlets because they have little or no contact with the chain store managers, and have been instructed to drop their merchandise at the delivery entrance to the store, and not to enter the retail sections of those stores.

(e) That the reasons why a driver may have little or no influence on the volume delivered to an independent

store include the following: (1) the company does not want the drivers to spend undue time in sales activities because this kind of activity is not the most efficient use of their particular abilities; (2) the volume delivered to any store is dependent upon the wants of the ultimate consumers who come to patronize that particular store, and any unsold milk must be returned to the dairy; unsold merchandise is an expense to the company because the independent store owner is given credit for it. The route driver has no influence whatsoever upon the ultimate consumers who buy at the store, and therefore who, in the last analysis, determine the amount of milk which shall be sold to that store customer.

(f) That from time to time the Bowman Dairy Company has experimented with extra incentives to induce route drivers to maximize their sales, but has found that these programs are of negligible significance with respect to the activities of wholesale route drivers. Such programs have been effective with retail drivers who deal directly with ultimate consumers, and have also been effective with solicitors who are responsible for developing new accounts, but it has been the experience of the Bowman Dairy Company management that such programs are of negligible value for wholesale route drivers. Retail route drivers and store solicitors are periodically given training in salesmanship in order to improve their ability to develop new business, but store wholesale route drivers are not given such sales training because the Bowman Dairy Company management has determined that such training programs are of no value for wholesale route drivers.

[fol. 1220] 5. Thomas B. Gilmore, if called to testify on behalf of the defendant Bowman Dairy Company, would testify as follows:

(a) That he is an attorney duly licensed to practice law in the State of Illinois and has been so licensed since 1927; that continuously since 1938 he has acted as attorney for the Associated Milk Dealers, Inc., and in such capacity has represented the Milk Dealers in

the Chicago marketing area in their negotiations with the Milk Wagon Drivers' Union Local 753, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, in negotiations leading up to the Collective Bargaining Agreements which have been entered into from time to time between said Union and said Milk Dealers.

(b) That the commissions payable on store routes were established for the purpose of curtailing the size of store routes and preventing the consolidation and reorganization of mixed routes.

(c) That in every labor negotiation between the Milk Wagon Drivers' Union and the Associated Milk Dealers, Inc., the representatives of the Union have, as part of their demands, requested increases in the rates of commission payable to drivers on store routes; that during the course of said negotiations, officers of the Union have made frequent public statements to the effect that the purpose for such demands for increases in the rates of commission payable to drivers on store routes was to keep the size of store routes within limits which can be safely served by a route man in a normal working day with due regard to the health, welfare and safety of the route man; that in addition to such public statements, in the course of such negotiations, officers of the Union have repeatedly explained that the purpose of demands for increases in the rates of commission payable to drivers on store routes was to create and preserve a maximum number of jobs for Union members; that said Union officers have repeatedly emphasized that said demands were in furtherance of the objective of obtaining what the Union regards as an equitable pay scale for its entire membership.

(d) That in his opinion, based on his experience in labor negotiations, the commission payments are the economic equivalent in the dairy industry in the City of Chicago of other forms of premium pay, such as [fol. 1221] time and a half for overtime, which are, in general, designed to spread the available jobs among the maximum number of members of the labor force.



6. Bowman Dairy Company has not sold any fluid milk products to the Goldblatt Bros. store at 47th and Ashland since May 11, 1957, or to any other Goldblatt store in the City of Chicago since January 4, 1958. Since that date said stores have been supplied with fluid milk products by Mottle Bros., an independent distributor of Meadowmoor Dairy Products.

7. On September 9, 1958, Bowman Dairy Company was advised by the Great Atlantic & Pacific Tea Company that said company would discontinue its purchases of fluid milk products from Bowman Dairy Company as of November 1, 1958, and that thereafter the A & P stores in the Chicago Area would be served exclusively by The Borden Company.

8. The Government moves that the proffered testimony of Messrs. Elrick, Bergfeld, Baer, and Gilmore be stricken on the following grounds and for the following reasons:

1. Raise collateral issues;
2. Argumentative;
3. Not the best evidence;
4. Incompetent;
5. Irrelevant and immaterial.

For the foregoing reasons, the Government cannot consent to this Order.

Enter:

Campbell, Judge.

December 16, 1958.

[fol. 1222]

TABLE NO. 101

Rebuttal to Government's Use of the Point as the Volume Bases for Allocating Transportation Costs  
(Fluid Milk Items Commonly Sold to Stores)

| Product and Container |          |        | Points per Container | Volume Occupied per Unit (Cubic Inches) <sup>1</sup> | Cubic Inches per Point | Pounds per Unit (Product and Container) <sup>2</sup> | Pounds per Point |
|-----------------------|----------|--------|----------------------|--|------------------------|--|------------------|
| Product               | Size     | F or G |                      |  |                        |  |                  |
| Milk                  | Gallon   | G      | 4                    | 611  | 152.8                  | 15.50  | 3.88             |
|                       | ½ Gallon | G      | 2                    | 349  | 174.5                  | 8.50   | 4.25             |
|                       | ½ Gallon | F      | 2                    | 230  | 115.0                  | 5.74   | 2.87             |
|                       | Quart    | G      | 1                    | 157  | 157.0                  | 4.25   | 4.25             |
|                       | Quart    | F      | 1                    | 115  | 115.0                  | 2.88   | 2.88             |
|                       | ¼ Quart  | G      | ¼                    | 94   | 282.0                  | 1.83   | 5.49             |
|                       | ¼ Quart  | F      | ¼                    | 58   | 174.0                  | 1.09   | 3.27             |
|                       | Pint     | G      | 1                    | 94   | 94.0                   | 2.50   | 2.50             |
|                       | Pint     | F      | 1                    | 79   | 79.0                   | 1.52   | 1.52             |
|                       | ½ Pint   | G      | ½                    | 54   | 216.0                  | 1.45   | 5.80             |
|                       | ½ Pint   | F      | ½                    | 39   | 156.0                  | 0.78   | 3.12             |
|                       | Pint     | G      | 1                    | 94   | 94.0                   | 2.50   | 2.50             |
|                       | Pint     | F      | 1                    | 79   | 79.0                   | 1.52   | 1.52             |
|                       | 4½ Pints | F      | 1                    | 230  | 230.0                  |  |                  |
| Dari-Rich             |          |        |                      |  |                        |  |                  |
| Egg Nog               | Quart    | G      | 4                    | 157  | 39.3                   | 4.25   | 1.06             |
|                       | Quart    | F      | 4                    | 115  | 28.8                   | 2.88   | 0.72             |
| Rich Cream            | Quart    | G      | 4                    | 157  | 39.3                   | 4.25   | 1.06             |
|                       | Quart    | F      | 4                    | 115  | 28.8                   | 2.88   | 0.72             |
|                       | Pint     | G      | 2                    | 94   | 47.0                   | 2.50   | 1.25             |
|                       | Pint     | F      | 2                    | 79   | 39.5                   | 1.52   | 0.76             |
|                       | ½ Pint   | G      | 1                    | 54   | 54.0                   | 1.45   | 1.45             |
| Sour Cream            | ½ Pint   | F      | 1                    | 58   | 58.0                   | 0.84   | 0.84             |
|                       | Pint     | F      | 2                    | 230  | 115.0                  | 2.38   | 1.19             |
|                       | ½ Pint   | F      | 1                    | 69   | 69.0                   | 0.95   | 0.95             |

<sup>1</sup> This is based on a study made early in 1955. A check of current conditions disclosed no significant difference. It is the effective space occupied on the truck. In other words, a case of gallon containers contains 4 gallon bottles and occupies 2,444 cubic inches, or 611 cubic inches per bottle.

<sup>2</sup> This is based on a study made October 1956; there has been no change since then. It includes the fluid product, the container, and a proportionate share of the case weight itself. For example, a case of gallon containers contains 4 gallon bottles and weighs 62.0 pounds, or 15.5 pounds per bottle.

TABLE NO. 102

[fol. 1223]  
 Recalculation of Plaintiff's Rebuttal Pre-trial data Relating to Customer Service Time  
 Reference: Table 10A of Plaintiff's Rebuttal Pre-trial Order

| Size Class<br>Of Store | Total<br>Number<br>Stores <sup>1</sup> | Total<br>Units<br>Delivered <sup>1</sup> | Total<br>Customer<br>Service<br>Time (Min.) <sup>2</sup> | Average<br>Units Per<br>Store <sup>3</sup> | Average Min.<br>Per Unit<br>(1/100 Min.) <sup>3</sup> |
|------------------------|--|--|--|--|---|
| Col. 1                 | Col. 2                                 | Col. 3                                   | Col. 4   | Col. 5                                     | Col. 6  |
| 1 - 5                  | 20                                     | 55                                       | 3 03   | 2 75                                       | 5 51  |
| 5 - 10                 | 43                                     | 306                                      | 10 73  | 7 12                                       | 3 51  |
| 10 - 15                | 51                                     | 602                                      | 30 41  | 11 80                                      | 5 05  |
| 15 - 20                | 51                                     | 854                                      | 40 09  | 16 75                                      | 4 69  |
| 20 - 25                | 56                                     | 1,240                                    | 50 05  | 22 14                                      | 4 04  |
| 25 - 30                | 38                                     | 1,035                                    | 41 44  | 27 24                                      | 4 00  |
| 30 - 35                | 40                                     | 1,290                                    | 40 67  | 32 25                                      | 3 15  |
| 35 - 40                | 40                                     | 1,473                                    | 39 12  | 36 83                                      | 2 66  |
| 40 - 45                | 38                                     | 1,597                                    | 55 74  | 42 03                                      | 3 49  |
| 45 - 50                | 44                                     | 2,079                                    | 88 25  | 47 25                                      | 4 24  |
| 50 - 60                | 55                                     | 3,006                                    | 98 48  | 54 65                                      | 3 28  |
| 60 - 70                | 40                                     | 2,568                                    | 91 15  | 64 20                                      | 3 55  |
| 70 - 80                | 53                                     | 3,956                                    | 123 12   | 74 64                                      | 3 11  |
| 80 - 90                | 32                                     | 2,735                                    | 90 21  | 85 47                                      | 3 30  |
| 90 - 100               | 28                                     | 2,651                                    | 86 04  | 94 68                                      | 3 25  |
| 100 - 120              | 42                                     | 4,566                                    | 135 50   | 108 71                                     | 2 97  |
| 120 - 140              | 20                                     | 2,578                                    | 122 33   | 128 90                                     | 4 75  |
| 140 - 160              | 15                                     | 2,205                                    | 87 86  | 147 00                                     | 3 98  |
| 160 - 180              | 10                                     | 1,698                                    | 42 48  | 169 80                                     | 2 50  |
| 180 - 200              | 6                                      | 1,125                                    | 67 02  | 187 50                                     | 5 96  |
| 200 - 250              | 12                                     | 2,634                                    | 74 45  | 219 50                                     | 2 83  |
| 250 +                  | 3                                      | 899                                      | 15 05  | 299 67                                     | 1 67  |
| Totals                 | 737                                    | 41,152                                   | 1,433 22   |  |   |

<sup>1</sup> Source: Columns 1, 2; 5, Table 10A, Plaintiff's Rebuttal Pre-Trial Order

<sup>2</sup> Calculation: Column 3 ÷ Column 2

<sup>3</sup> Calculation: 100 x (Column 4 ÷ Column 3)

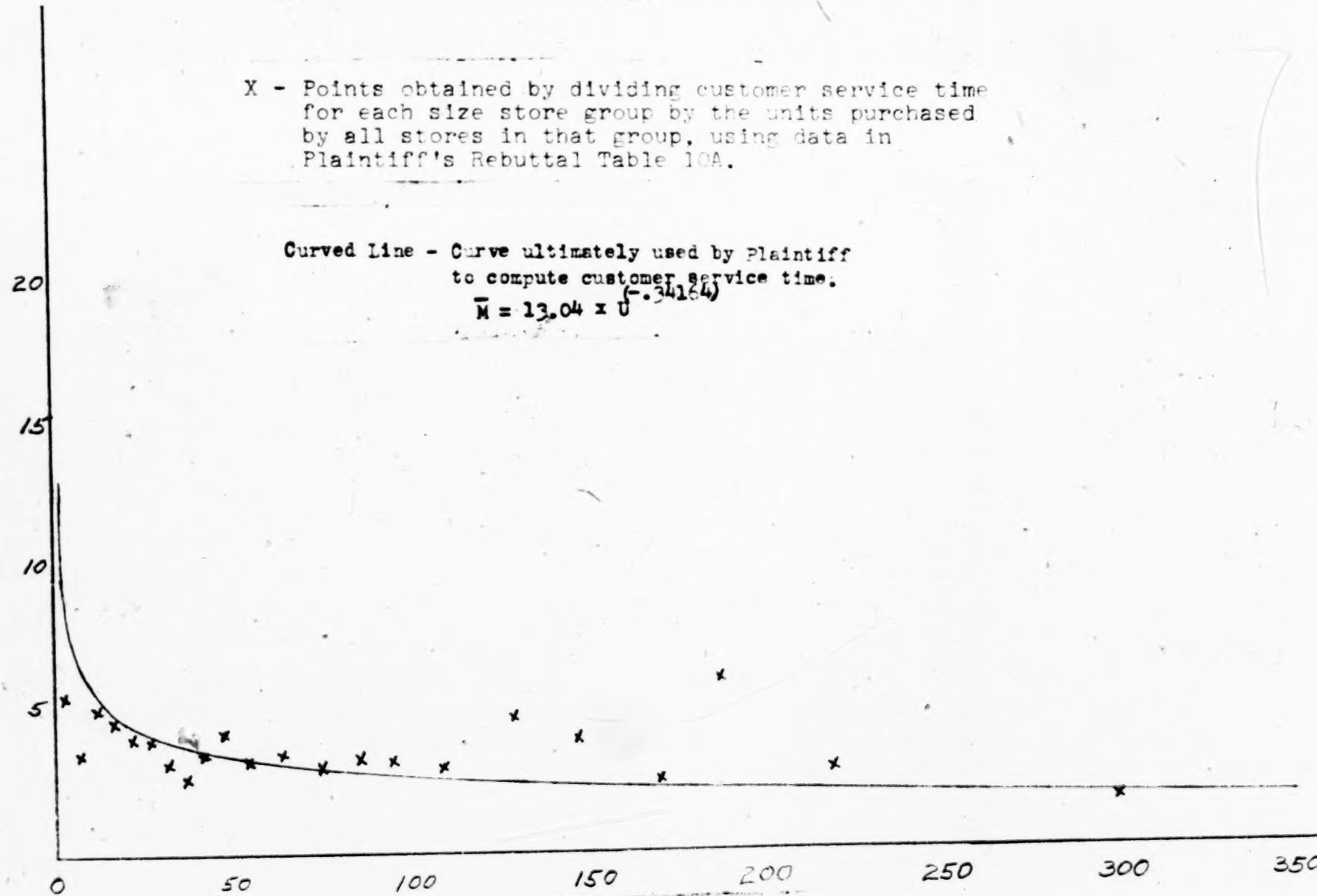
RECALCULATION OF PLAINTIFF'S REBUTTAL PRE-TRIAL  
DATA RELATING TO CUSTOMER SERVICE TIME

X - Points obtained by dividing customer service time  
for each size store group by the units purchased  
by all stores in that group, using data in  
Plaintiff's Rebuttal Table 10A.

Curved Line - Curve ultimately used by Plaintiff  
to compute customer service time.

$$\bar{M} = 13.04 \times U^{-.34164}$$

AVERAGE MINUTES PER UNIT DELIVERED  
DAILY (IN 1/100 MINUTES) =  $\bar{M}$



AVERAGE NUMBER OF DAILY UNITS

(fol. 12  
Recalc  
Refere

Size  
0

Col

1 -

5 -

10 -

15 -

20 -

25 -

30 -

35 -

40 -

45 -

50 -

60 -

70 -

80 -

90 -

100 -

120 -

140 -

160 -

180 -

200 -

25

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

[fol. 1225]

TABLE NO. 104

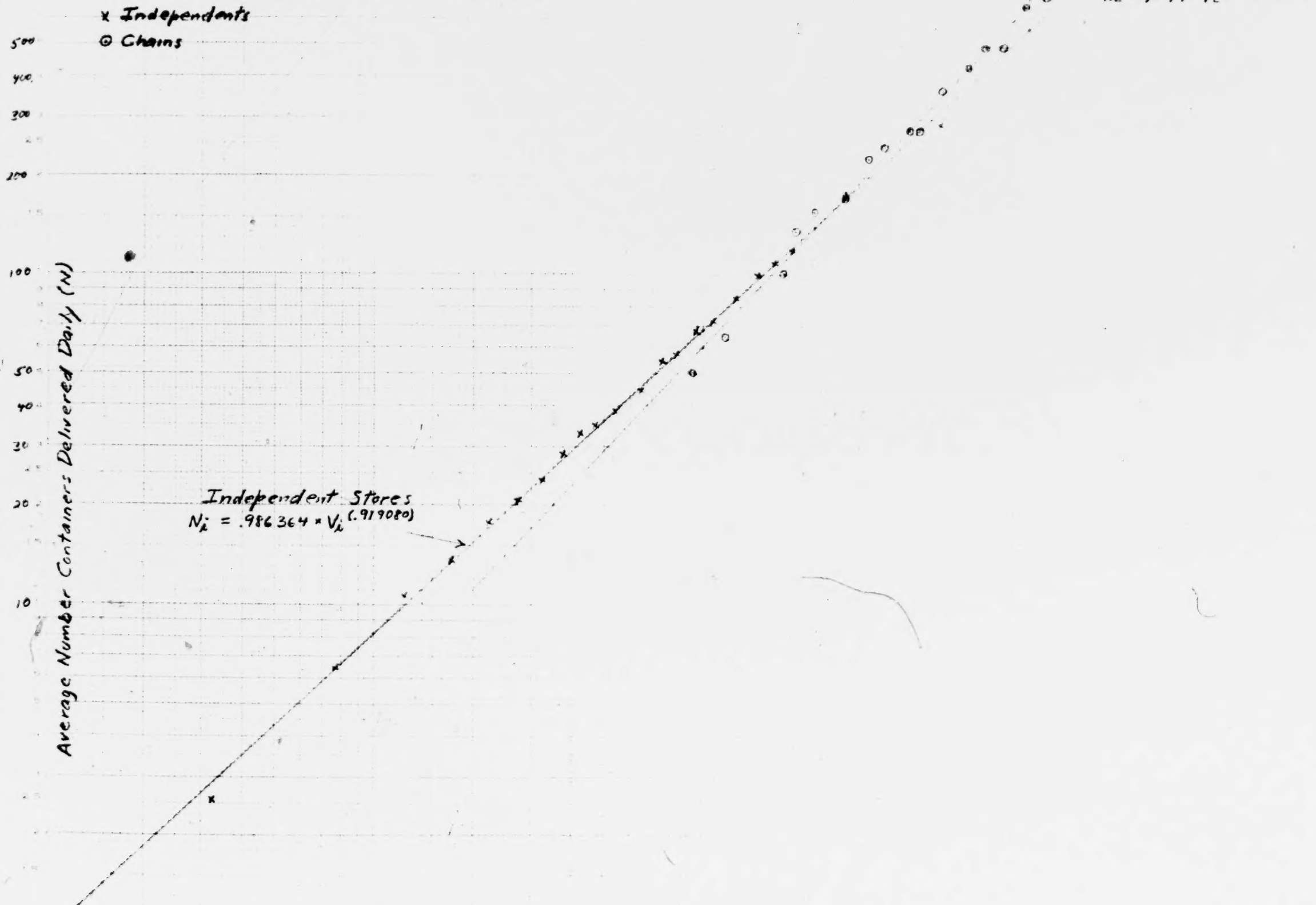
Review of Plaintiff's Rebuttal Pre-Trial Data<sup>1</sup>

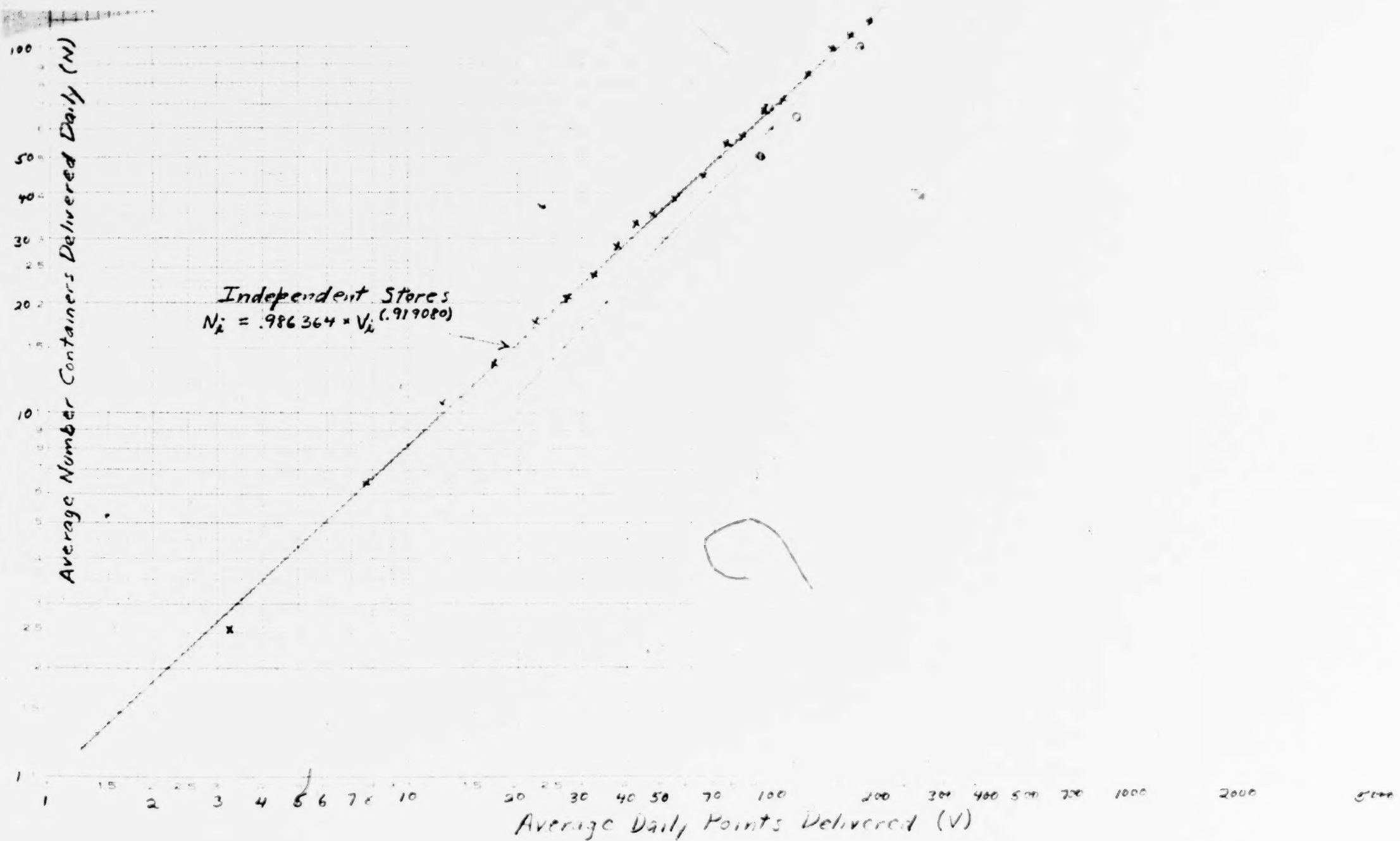
Number of Independent and Chain Stores in the various Volume Groups, as grouped by Plaintiff in Plaintiff Rebuttal Tables 12A and 12B and used for calculations in Plaintiff Rebuttal Charts IIIA, IIIB, IVA, and IVB.

| Volume Group | Independent   |                   | Chain         |                   |
|--------------|---------------|-------------------|---------------|-------------------|
|              | No. of Stores | Per Cent of Total | No. of Stores | Per Cent of Total |
| < 5          | 27            | ↑                 | ↑             | ↑                 |
| 5-10         | 61            | ↑                 | ↑             | ↑                 |
| 10-15        | 60            | ↑                 | ↑             | ↑                 |
| 15-20        | 72            | ↑                 | ↑             | ↑                 |
| 20-25        | 55            | ↑                 | ↑             | ↑                 |
| 25-30        | 49            | ↑                 | ↑             | ↑                 |
| 30-35        | 38            | ↑                 | ↑             | ↑                 |
| 35-40        | 41            | ↑                 | 0             | ↑                 |
| 40-45        | 38            | ↑                 | ↑             | ↑                 |
| 45-50        | 41            | ↑                 | ↑             | ↑                 |
| 50-60        | 60            | ↑                 | ↑             | ↑                 |
| 60-70        | 56            | 98.1%             | ↑             | 7.6%              |
| 70-80        | 46            | ↑                 | ↑             | ↑                 |
| 80-90        | 26            | ↑                 | ↓             | ↑                 |
| 90-100       | 33            | ↑                 | 1             | ↑                 |
| 100-120      | 46            | ↑                 | 1             | ↑                 |
| 120-140      | 31            | ↑                 | 0             | ↑                 |
| 140-160      | 15            | ↑                 | 0             | ↑                 |
| 160-180      | 12            | ↑                 | 1             | ↑                 |
| 180-200      | 7             | ↑                 | 2             | ↑                 |
| 200-250      | ↑             | ↑                 | 3             | ↑                 |
| 250-300      | 12            | ↑                 | 9             | ↑                 |
| 300-350      | ↑             | ↑                 | 4             | ↑                 |
| 350-400      | ↓             | ↑                 | 8             | ↑                 |
| 400-450      | ↑             | 1.9%              | 5             | 92.4%             |
| 450-500      | ↑             | ↑                 | 1             | ↑                 |
| 500-600      | ↑             | ↑                 | 8             | ↑                 |
| 600-700      | ↑             | ↑                 | 8             | ↑                 |
| 700-800      | 4             | ↑                 | 7             | ↑                 |
| 800-900      | ↑             | ↑                 | 3             | ↑                 |
| 900-1,000    | ↑             | ↑                 | 3             | ↑                 |
| 1,000+       | ↓             | ↑                 | 2             | ↑                 |
|              | 839           |                   | 66            |                   |

<sup>1</sup> Source: Plaintiff's Rebuttal Tables 12A and 12B.

FF'S REDUTTA CHARTS IIIA & IIIB  
COMBINED ON ONE CHART







# CONTAINER - POINT RELATIONSHIP

STORES BUYING LESS THAN 50 POINTS AND STORES BUYING MORE THAN 50 POINTS

○ Small Stores,  
Less Than 50 Points

x Larger Stores,  
More Than 50 Points

Source: Plaintiff Tables 12 & 13

Larger Stores  
 $N = .665 \times V^{(1.000)}$

Small Stores  
 $N = .770 \times V^{(1.000)}$

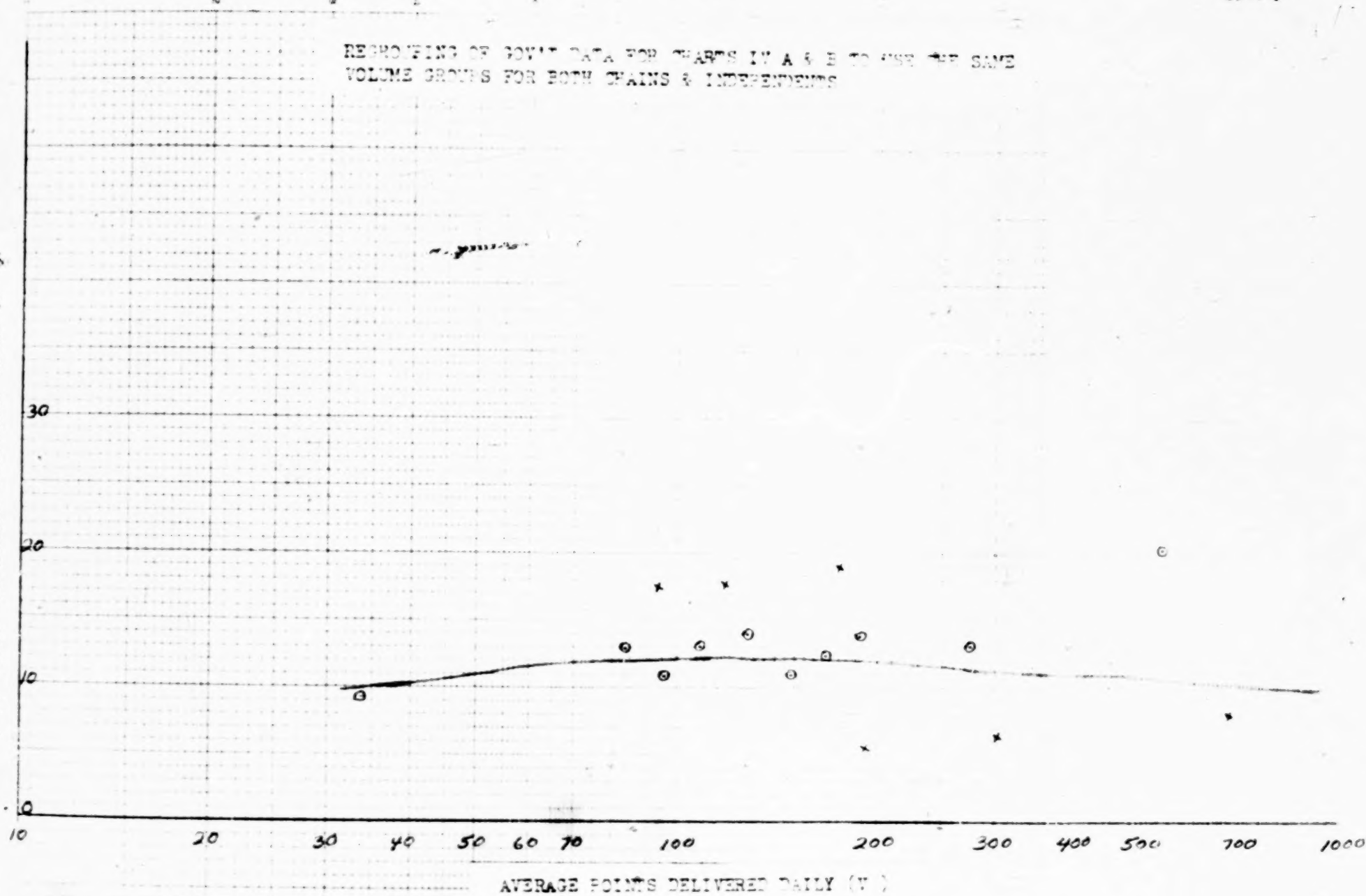
Average Number Containers Delivered Daily (N)

2 3 4 5 7 10 20 30 40 50 70 100 200 300 500 1000

Average Daily Points Delivered (V)

REWORKING OF GOVT DATA FOR CHARTS IV A & B TO USE THE SAME  
VOLUME GROUPS FOR BOTH CHAINS & INDEPENDENTS

% OF CLASS CONTAINERS DELIVERED DAILY (F)



[Vol. 1230]

TABLE No. 109

Quantity of Merchandise Carried in one "Swing" by a Bulk Wholesale Drive

| Container Size   | No. of Containers<br>Carried in One<br>"Swing" | Volume Carried<br>In One "Swing" |
|--|--|----------------------------------|
| 1. Can Merchandise—driver swings one can at a time.    |  |                                  |
| 10 gallon  | 1  | 10 gallons                       |
| 8 gallon   | 1  | 8 gallons                        |
| 5 gallon   | 1  | 5 gallons                        |
| 2. Cased Merchandise—driver swings one case at a time. |  |                                  |
| $\frac{1}{2}$ gallon—fiber                             | 12   | 6 gallons                        |
| quart—glass  | 12   | 3 gallons                        |
| —fiber   | 24   | 6 gallons                        |
| $\frac{1}{4}$ quart—glass                              | 24   | 2 gallons                        |
| —fiber   | 48   | 1 gallon                         |
| pint—glass   | 24   | 3 gallons                        |
| —fiber   | 35   | 4 $\frac{3}{8}$ gallons          |
| $\frac{1}{2}$ pint—glass                               | 24   | 1 $\frac{1}{2}$ gallons          |
| —fiber   | 72   | 4 $\frac{1}{2}$ gallons          |

[fol 1231]

## TABLE No. 110

## History of Route Which Served C. Goldenstern

427 West 69th Street

1. On January 1, 1955 on # 129 route—8th stop.

2. Goldenstern

- 1- 1-55—2 deliveries—9:15 A.M. and 11:45 A.M.
- 3- 1-55—Charles Oswald—added to route
- B. Nicklas—added to route
- 4- 1-55—J. Price restaurant quit
- 7- 1-55—New account added—342 W. 69th Street
- 11- 28-55—Added 4 accounts from # 59 route—service time to Goldenstern changed to 10 A.M.
- 12- 27-55—New account—332 W. 71st Street added
- 1- 1-56—New account—439 W. 75th Street added
- Lost account—7349 Halsted, quit

Sequence changed—Goldenstern served again 9:15 A.M.

- 3- 8-56—New account—7252 Wentworth
- 4- 27-56—Closed account—224 W. 69th Street
- 6- 1-56—Closed account—439 W. 75th Street
- 6- 20-56—New account—348 W. 75th Street
- 7- 22-56—Transferred 2 accounts to Englewood Division,  
7256 Wentworth and 348 W. 75th Street
- 7- 12-56—Lost account—342 W. 69th Street, quit
- 11- 3-56—Closed—Kroger—7260 Wentworth
- 1- 12-57—Santee Food—Quit—340 W. 77th Street
- 2- 1-57—Snack Shop—7204 Wentworth—Closed
- 4- 3-57—Nichols Food—6757 Wentworth—Closed

Goldenstern—now 7th stop

6- 20-57—Jo-Jo Book—401 W. 69th—Closed for vacation

Goldenstern—now 6th stop

- 7- 6-57—Fanny—7701 Fielding—Closed for vacation
- 7- 20-57—Goldenstern—Closed for vacation
- 7- 22-57—Fanny—7701 Fielding—re-open
- 8- 2-57—Goldenstern—427 W. 69th re-open
- 9- 4-57—Jo-Jo Book—401 W. 69th re-open
- 9- 6-57—Reuther Mkt.—524 W. 71st Street—closed
- 10- 22-57—Jim's restaurant—6659 Cottage  
—Head Store—6545 Cottage  
—Payne—510 E. 67th Street  
12- 31-57—Goldenstern still on # 129 route

added to route

[fol 1232]

## TABLE No. 111

## History of Route Which Served G. Psomakas

2416 W. 47th Street

1. On January 1, 1955—on # 1471 Route—15th stop

2. G. Psomakas

- 6 1 55—M. Wauzek—4801 Winchester—new account
- 9 26 55—Seward School—4600 Hermitage—new account
- 10 2 55—Varlo—5000 California—quit
- 10 4 55—J. Schuch—2851 W. 59th St.—transferred to Englewood Div.
- 10 21 55—A. Alberg—3415 W. 51st St.—transferred to Englewood Div.
- 10 21 55—Psomakas—now 14th stop
- 10 28 55—J. Kurcharzyk—5254 Washtenaw—new account
- 1 10 56—E. Nykrin—2702 W. 47th St.—quit
- 1 10 56—Psomakas—now 13th stop
- 3 1 56—Kosne—2457 W. 51st St.—New account
- 3 7 56—S. Grzywna—4337 Woods—transferred to # 527 route
- G. Raulik—5440 Hoyne
- R. Hoffman—4958 Artesian—transferred to Englewood Division
- M. Worczuk—4801 Winchester
- G. Fonecki—5218 Campbell
- 3 7 56—Goldblatt—47th & Ashland—transferred to # 527 route
- 3 8 56—7 accounts added
- Raulnick—3109 W. 59th St.
- B. Rodriguez—3803 W. 56th St.
- Peck School—3826 W. 58th St.
- Cauchos—3756 W. 64th St.—Transferred from # 800 route
- B. Rhodes—6601 Pulaski
- Hi-Low—3409 W. 63rd St.
- J. Hauser—5609 Kedzie
- 4 2 56—McAvey—5947 Damen—new account
- 6 13 56—St. Michael School—48th & Damen—closed for vacation
- 6 20 56—Peck School—3826 W. 58th St.—closed for vacation
- 7 6 56—L. Novak—3759 W. 64th Pl.—quit
- Psomakas—now 10th stop
- 9 5 56—Peck School—3826 W. 58th St.—re-opened
- 9 6 56—B. Rhodes—6601 Pulaski—quit
- 9 10 56—St. Michael School—48th & Damen—re-opened
- 10 24 56—J. Kuchazyk—5254 Washtenaw—quit
- 11 20 56—Gerts Rest.—3754 W. 63rd St.—new
- 12 22 56—Kosner—2457 W. 51st St.—close
- 2 1 57—Peck School—quit
- Psomakas—10th stop
- 3 1 57—J. Kasner—re-opened
- 3 30 57—Hi-Low—3409 W. 63rd St.—closed
- 4 1 57—Hi-Low—3244 W. 63rd St.—opened
- 6 11 57—St. Michael School—48th & Damen—closed for vacation
- Psomakas—now 9th stop
- 9 9 57—St. Michael School—re-opened
- Psomakas—now 10th stop
- 9 19 57—Frank Mkt.—5605 Crawford—new account
- 11 1 57—Frank Mkt.—5605 Crawford to early service
- Psomakas to 11th stop
- 12 31 57—# 1471 route still serving Psomakas

[fol. 1228]

TABLE No. 107

Regrouping of Governmental Data in Tables 12 & 13 to Use Same Groupings for Both Chains and Independents

| Volume Group<br>(Daily Points) | Total Points Del'd |                     | No. of Stores |                     | Average<br>Daily Points |                                    | % of Glass Cont. Del'd-Ind. |                |       | % of Glass Cont. Del'd-Chain |                |       |
|--------------------------------|--------------------|---------------------|---------------|---------------------|-------------------------|------------------------------------|-----------------------------|----------------|-------|------------------------------|----------------|-------|
|                                | Ind.               | Chain<br>(Table 12) | Ind.          | Chain<br>(Table 12) | Ind.                    | Chain<br>(Table 12 or<br>Computed) | Total<br>Cont.              | Glass<br>Cont. | Ratio | Total<br>Cont.               | Glass<br>Cont. | Ratio |
|                                |                    |                     |               |                     |                         |                                    |                             |                |       |                              |                |       |
| 0- 80                          | 22053.5            |                     | 653           | —                   | 33.8                    | —                                  | 16308.7                     | 1495.5         | 9.2%  |                              |                | —     |
| 80- 90                         |                    |                     | 26            | —                   | 83.6                    | —                                  |                             |                | 12.9% |                              |                | —     |
| 90-100                         |                    |                     | 33            | 1                   | 95.5                    | 93.5                               |                             |                | 10.9% |                              |                | 17.5% |
| 100-120                        |                    |                     | 46            | 1                   | 108.0                   | 117.7                              |                             |                | 13.1% |                              |                | 17.7% |
| 120-140                        |                    |                     | 31            | —                   | 127.1                   | —                                  |                             |                | 14.0% |                              |                | —     |
| 140-160                        |                    |                     | 15            | —                   | 148.3                   | —                                  |                             |                | 11.0% |                              |                | —     |
| 160-180                        |                    |                     | 12            | 1                   | 167.6                   | 175.6                              |                             |                | 12.4% |                              |                | 18.9% |
| 180-200                        |                    |                     | 7             | 2                   | 188.4                   | 191.7                              |                             |                | 13.8% |                              |                | 5.5%  |
| 200-400                        |                    | 7293.6              | 12            | 24                  | 274.6                   | 303.9                              |                             |                | 13.1% | 4897.8                       | 310.4          | 6.3%  |
| 400 & Over                     |                    | 24967.7             | 4             | 37                  | 536.4                   | 674.8                              |                             |                | 20.3% | 16423.3                      | 1310.3         | 8.0%  |
|                                |                    |                     | 839           | 66                  |                         |                                    |                             |                |       |                              |                |       |

[fol. 1233]

TABLE No. 112

Record of 1955 Mileage, Routes #129 and #1471, South Division

| Month        | Miles Traveled To, On, and From Routes |             |
|--------------|--|-------------|
|              | Route #129                             | Route #1471 |
| January 1955 | 523                                    | 413         |
| February     | 732                                    | 680         |
| March        | 720                                    | 711         |
| April        | 701                                    | 798         |
| May          | 581                                    | 725         |
| June         | 744                                    | 658         |
| July         | 718                                    | 631         |
| August       | 612                                    | 631         |
| September    | 818                                    | 671         |
| October      | 866                                    | 559         |
| November     | 698                                    | 624         |
| December     | 701                                    |             |

\* Record incomplete for January.

[fol. 1234]

TABLE No. 113

Record of Sales for the First Seven Days of Each Month of 1955, Routes #129 and #1471, South Division Volume (Points)

| Month       | Sunday | Monday             | Tuesday | Wednesday | Thursday | Friday | Saturday |
|-------------|--------|--------------------|---------|-----------|----------|--------|----------|
| Route #129  |        |                    |         |           |          |        |          |
| Jan.        |        | 1360               | 1301    | 1228      | 1154     | 1622   | 235      |
| Feb.        |        | 1280               | 1235    | 1280      | 1095     | 1152   | 1774     |
| Mar.        |        | 1282               | 1349    | 1181      | 1181     | 1215   | 1771     |
| Apr.        |        | 1321               | 1270    | 1223      | 1142     | 1250   | 1701     |
| May         |        | 1150               | 1204    | 1165      | 1342     | 1470   | 2031     |
| June        |        | Route Book Missing |         |           |          |        |          |
| July        |        |                    | 1350    | 1338      | 1686     | 1128   | 1874     |
| Aug.        |        | 1160               | 1278    | 1198      | 1244     | 1256   | 1797     |
| Sept.       |        |                    | 1745    | 1528      | 1285     | 1110   | 1618     |
| Oct.        |        | 1200               | 1348    | 1265      | 1190     | 1208   | 1755     |
| Nov.        |        | 1426               | 1305    | 1263      | 1242     | 1212   | 1948     |
| Dec.        |        | 1786               | 1568    | 1382      | 1483     | 1508   | 2185     |
| Route #1471 |        |                    |         |           |          |        |          |
| Jan.        |        | 1260               | 1297    | 1312      | 1245     | 1456   | 695      |
| Feb.        |        | 1404               | 1346    | 1345      | 1298     | 1430   | 1901     |
| Mar.        |        | 1452               | 1304    | 1427      | 1245     | 1542   | 1912     |
| Apr.        |        | 1352               | 1344    | 1325      | 1385     | 1209   | 1981     |
| May         |        | 1426               | 1377    | 1344      | 1417     | 1588   | 2031     |
| June        |        | Route Book Missing |         |           |          |        |          |
| July        |        | 758                | 1457    | 1556      | 1420     | 1343   | 2277     |
| Aug.        |        | 1514               | 1526    | 1514      | 1407     | 1448   | 2060     |
| Sept.       |        | 1750               | 1390    | 1424      | 1382     | 1397   | 2237     |
| Oct.        |        | 1360               | 1447    | 1378      | 1409     | 1439   | 2270     |
| Nov.        |        | 1459               | 1374    | 1470      | 1272     | 1650   | 2245     |
| Dec.        |        | 1664               | 1553    | 1556      | 1517     | 1612   | 2504     |



1004

[fol. 1235] IN UNITED STATES DISTRICT COURT, NORTHERN  
DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 51 C 947

UNITED STATES OF AMERICA, Plaintiff,

v.

BORDEN COMPANY, et al., Defendants

MEMORANDUM, FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
DECREE—February 27, 1961

CAMPBELL, Chief Judge.

This suit began in June, 1951 by the filing of a complaint charging eight Chicago dairies with various violations of Sections 1 and 2 of the Sherman Act and Section 2(a) of the Clayton Act (Title 15 U.S.C., Sections 1, 2, 13(a)). Before the taking of any evidence, four of the eight defendants entered into a consent decree prohibiting the various practices which the Government sought to enjoin. The remaining defendants are the Borden Company and a wholly-owned subsidiary (hereinafter collectively referred to as Borden); and Bowman Dairy Company and a wholly-owned subsidiary (hereinafter collectively referred to as Bowman).

[fol. 1236] Since my conclusions rest in some measure upon differences between those practices alleged in the complaint and those practices alleged by plaintiff to exist in the milk industry in Chicago today, it is important to review those portions of the complaint which deal with alleged violations of the Clayton Act. The complaint is twenty-three pages long, and, apart from its prayer for relief, consists of forty-eight paragraphs, only two of which are devoted to the Clayton Act charges, and read as follows:

“B. *Violations of Section 2(a) of the Clayton Act as Amended.*

“46. Beginning on or about January, 1941, and continuing up to the date of the filing of this complaint, each of the defendants has sold and is continuing to sell for resale fluid milk in interstate trade and com-

merce to different wholesale purchasers in the Chicago area at prices which discriminate between said purchasers of fluid milk of like grade and quality, and the effect of such discrimination may have been and may continue to be to substantially lessen competition or tend to create a monopoly in the sale of fluid milk to wholesale purchasers in the Chicago area or to injure, [fol. 1237] destroy or prevent competition between the aforesaid wholesale purchasers knowingly receiving the benefit of such price discriminations and other wholesale customers not receiving the benefit of such discriminations, in violation of Section 2(a) of the Clayton Act, as amended (38 Stat. 730, 49 Stat. 1526, 15 U.S.C. Sec. 13(a)). The defendants are continuing, threatening to continue, and will continue the aforesaid offenses unless the relief hereinafter prayed for is granted.

"47. The aforesaid discriminations in price have been granted, often secretly, in the form of preferential prices, discounts, rebates, lump sum cash payments, installment cash sums, and interest-free loans."

The length of the allegations respecting Clayton Act violations fairly indicates the importance which the plaintiff attached to those violations at the 1953 trial, and the amount of time devoted to proof of those allegations, as compared to the magnitude and complexity of the plaintiff's alleged Sherman Act case.

At the close of plaintiff's case in 1953, I dismissed the entire complaint *U. S. v. Borden Co.*, 111 F. Supp. 562, [fol. 1238] holding, first with respect to the Sherman Act, that plaintiff had failed to show either monopoly or a conspiracy to monopolize and, second, with respect to the Clayton Act that (even though plaintiff had established a prima facie case) the defendants were effectively prohibited from committing further violations by the terms of a decree entered by another judge of this Court. *Dean Milk Company v. American Processing and Sales Company*, No. 49 C 1159. I then stated, at 111 F. Supp. pages 581, 582:

"A decree of this court entered at the instance of a private litigant is as binding upon a defendant as a decree entered at the instance of the Government; and a consent decree, entered by any judge of this court

without hearing evidence, is as binding as a decree entered by another judge after a protracted trial. I conclude, therefore, that each of the remaining defendants is now effectively enjoined by this court from performing any of the acts set forth in the Government's prayer for injunctive relief, insofar as the Clayton Act is concerned. "As a court of equity, I will not perform [fol. 1239] a useless task. The violations of the Clayton Act described in the complaint and shown at the trial are, for the most part, old violations. And to this court, the Dean decree assures, as completely as any decree can assure, that there will be no new violations."

On appeal, the Supreme Court affirmed the Sherman Act phase of the case, but reversed and remanded as to the Clayton Act phase on the sole ground that the existence of a private decree does not *itself* deprive the Government of its right to a decree when *the need for injunctive relief is shown*. *U. S. v. Borden Company*, 347 U. S. 514. However, the Court further indicated that the *Dean* Decree is properly one of the many considerations involved in this determination:

"The Government contends that it has 'an independent right to relief against violations of the Clayton Act, without regard to whether such violations previously have been enjoined by a decree in a private antitrust suit.' But we cannot say that the existence of the private decree warrants no consideration by the chancellor in assessing the likelihood of recurring illegal activity. We hold only that, in view of the difference in the respective interests sought to be vindicated by the Government and the private litigant, the district judge abused his discretion in refusing the Government an injunction solely because of the existence of the private decree.

"The judgment of dismissal as to the Sherman Act allegations is affirmed; as to the Clayton Act allegations the case is remanded to the District Court for further consideration, and such further proceedings as may be necessary, in accordance with this opinion." (347 U. S. 514, 520.)

After remand, on the motion of plaintiff, on April 18, 1955, I opened the record for the introduction of further evidence by plaintiff for the purpose of showing the existence of current Clayton Act violations, and by the defendants for asserting affirmative defenses. All of the evidence was taken in the form of stipulations which were then embodied in pre-trial orders, and in the form of depositions of expert witnesses. Afterward, all parties argued their respective positions through able and comprehensive briefs.

I am grateful to counsel for all parties for their cooperation [fol. 1241] and assistance in preparing the lengthy pre-trial orders and the able briefs. Without such cooperation this case might have consumed many weeks of the Court's time.

The sole question now before me is the appropriateness of the requested injunctive relief—whether, in the light of *present* conditions in the milk industry in Chicago, as shown by the evidence presented to the Court after remand, the public interest would be served by the issuance of an injunction in the form prayed by plaintiff's complaint.

Those paragraphs of the complaint, quoted above, relating to the Clayton Act fairly describe the type of evidence which was introduced at the 1953 trial. Plaintiff then showed that defendants had engaged in "stop-buying," that is, the "purchasing" of wholesale outlets. Plaintiff also showed that defendants had made interest-free loans to wholesale customers and granted discriminatory discounts to various customers either outright, or through gifts of fixtures or merchandise.

These practices, described in the complaint and shown at the 1953 trial, were not referred to after remand of the case. Indeed, there is no evidence of any kind to support a finding that any such practices exist today in the milk [fol. 1242] industry in Chicago. The practice to which the evidence before me relates, as shown by the stipulations of fact prepared after remand, consist of price discriminations which may be summarized as follows:

1. Bowman published and followed, during the years following the remand, discount quotations which on their face discriminated between chain customers and independent stores. For example, from June, 1954

to August, 1955, the published Bowman discount quotations were as follows:

*To chain customers (A & P and Kroger):* 11 per cent off of the fluid milk list prices regardless of quantities purchased.

*To independent stores:* A sliding scale quantity discount with a maximum of 8 per cent off of the fluid milk list prices computed on the basis of the average daily "points" purchased each month.

Plaintiff has demonstrated by its Schedule I, comparing five grocery stores, chain and independent, within a radius of one mile and served by the same milk route, and by its Schedule II, comparing four stores, chain and independent, within another radius of one [fol. 1243] mile and served by the same milk route, that a price discrimination exists as against the independent stores under applicable discount quotations.

2. With respect to Borden, plaintiff's evidence as embodied in the stipulations also shows price discrimination between chain and independents by means of published discount schedules. For example, from June, 1954 until August, 1955, the following discount quotations were in effect:

*To chain stores (A & P and Jewel):* 8½ per cent off of the fluid milk list prices regardless of quantities purchased.

*To independents:* A graduated quantity discount with a maximum of 4 per cent off of fluid milk list prices computed on the basis of average daily "points" purchased each month. Again, by schedules relating to chain and independent stores within a radius of one mile and served by the same milk route, plaintiff has demonstrated a price discrimination as against independents under applicable discount quotations.

[fol. 1244] Plaintiff has made similar charges of price discrimination respecting the "bulk wholesale customers" of defendants. This class of customers includes, principally, restaurants and hotels. By tables comparing the flat, net prices on customer purchases in the downtown area of Chicago, Illinois, plaintiff has demonstrated with regard

to both defendants price differences among their bulk wholesale customers.

With regard to both classes of customers, plaintiff, in order to show prima facie violations of Section 2(a) of the Clayton Act, must prove that:

1. Defendants were engaged in commerce, and that discriminatory practices occurred "in the course of such commerce";
2. Defendants either directly or indirectly discriminated in price between purchasers of commodities of like grade and quality;
3. That the effect of such discrimination "may be" to substantially lessen competition or to create a monopoly in this line of commerce, or to injure, destroy, or prevent competition with any person who grants such discrimination, or with customers of such person.

It is not open to question that the price differences described above are not price discriminations under Section [fol. 1245] 2(a) in light of *F.T.A. v. Anheuser-Busch, Inc.*, 363 U. S. 536. However, defendants argue that these discriminations are not prima facie violations of Section 2(a) on the basis of these reasons:

1. Defendants contend that plaintiff failed to prove that the alleged violations were committed in the course of interstate commerce. A similar contention was before me prior to the 1953 trial upon the motion of defendants. After extensive argument and due deliberation, I rejected the contention and denied defendants' motion. On appeal, this contention was neither pressed by defendants nor considered by the Supreme Court. I have, however, again fully considered the evidence before me and find that defendants' alleged violations with regard to wholesale and bulk wholesale customers did occur in interstate commerce.
2. Defendants contend that the Government has failed to show that there has been any injury to competition. This argument is wholly without merit in view of the well-settled principle that the Clayton Act frowns [fol. 1246] upon any discrimination which "may" injure competition. *Federal Trade Commission v. Mor-*

*ton Salt Company*, 334 U. S. 37; *E. Edelmann & Company v. Federal Trade Commission*, 239 F. 2d 152, 154. I note here the interesting analysis of the requirement of injury to competition by the Seventh Circuit Court of Appeals in the recent decision of *Aubensch-Busch Inc., v. F.T.C.*, ———— F. 2d ————, decided upon remand from the Supreme Court. Since that case differs factually from the cause now before me, I do not here find it relevant.

In short, the evidence shows: That the sales made by defendants were in commerce; that the defendants discriminated in price; that the customers of defendants were in competition with each other, and that there may be an injury to competition. I find that the published discount quotations of defendants, which on their face show discriminations between the defendants' wholesale customers, constitute prima facie violations of Section 2(a) of the Clayton Act. I further find that the discriminations between defendants' bulk wholesale customers constitute prima facie violations of Section 2(a) of the Clayton Act.

As I indicated previously, there are many factors which [fol. 1247] affect a determination of this case. Most important is the defense of cost justification raised by the defendants in accordance with the cost proviso of Section 2(a) which reads as follows:

"Provided, That nothing \* \* \* (herein) contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered \* \* \*."

Though there has been some disagreement as to whether this provision should be strictly construed so as to require full cost justification of every price differential with mathematical certainty, or whether the provision should be liberally construed so as to allow a reasonable latitude in cost studies, I find that a liberal approach to cost justification studies is today supported by expert, as well as judicial, opinion.



The Supreme Court in *Automatic Canteen Co. v. F.T.C.*, 346 U. S. 61 commented specifically at Page 68 upon the "intricacies inherent in the attempt to show costs in a Robinson-Patman proceeding" and the "elusiveness of cost data." The Federal Trade Commission in *In the Matter of Minneapolis-Honeywell Regulator*, 44 F.T.C. 351, stated [fol. 1248] at Page 394:

"Cost studies of the sort presented in this matter ordinarily do not afford precise accuracy but must necessarily embrace a number of conjectural factors and allocations. There is inherent in them a reasonable margin of allowable error."

. . .

"Where they (cost studies) are made in good faith and in accordance with sound accounting principles, they should be given a very great weight. \* \* \* Respondent's burden under the Act is very great and it should have a liberal measure of consideration when it becomes apparent that it has made sincere and extensive efforts to discharge that burden. We have accordingly accepted the results of the cost study as fairly reflecting respondent's cost differentials within a reasonable margin of error."

In *American Can Co., v. Russellville Canning Co.*, 191 F. 2d 38, the Court, finding that the district court "applied too rigid a standard," stated at Page 59:

"If a manufacturer granting quantity discounts is required to establish and to continuously maintain a [fol. 1249] cost accounting system which will record the expenses incurred in selling every individual customer and all of the data which the plaintiff deems essential, the burden, expense and assumption of risk involved would seem to preclude the granting of quantity discounts, at least until the approval of the plan by the Federal Trade Commission had been secured.

"We cannot say that the District Court was compelled to accept the defendant's justification of the quantity discounts which were granted. If, however,

the system was adopted in good faith and the cost study during the test period of more than four years was honestly maintained, and reflected with substantial accuracy the differences in selling costs as between the customers in Class C and those in Classes A and B, we think the court's conclusion that the justification was inadequate because it was not continued beyond the test period, did not reflect cost differences as between individual customers, and failed to take into consideration conjectural geographical differences in [fol. 1250] selling cost and other matters which might be thought to have some speculative bearing on such cost differences, was not justified."

\* In *Reid v. Harper and Brothers*, 235 F. 2d 420, the Court made the following statements at Page 422:

"Both the courts and the Federal Trade Commission have recognized the dilemma confronting defendants in suits such as these, and have liberally accepted data derived from litigation-inspired accounting methods."

"To require a seller in these circumstances to justify the cost differential in each and every transaction with his buyers, rather than on the aggregate basis of their dealings, would prove unduly onerous. The impact of such a requirement might be to discourage all price differentials, even those actually justified by cost distinctions."

In addition, the Report to the Federal Trade Commission by the Advisory Committee on Cost Justification under the Robinson-Patman Price Discrimination Act, filed February, 1956, and the 1955 Report of the Attorney General's National Committee to Study the Antitrust Laws concur in supporting a liberal approach to cost justification studies. The Report of the Attorney General's Committee contains [fol. 1251] the following statements at Pages 174, 175:

"As a legal framework, we recommend recognition that a Robinson-Patman cost defense is not susceptible to testing by precise or mechanical rules. We advise a liberal interpretation of the statute's 'due allowance' criterion as enacting a reasonable de minimis concept

to exonerate a challenged price even if an attempted cost defense falls short of 'justifying' it by a fractional amount. Similarly, realistic adaptation of this concept should validate only partially 'justified' price concessions whenever the 'unjustified' portion of the differential alone could not reasonably cause 'injury sufficient to bring the Act into play \* \* \*."

"Because any accounting apportionment of costs essentially involves subjective business judgment, not objective fact, we recommend that a reasonable approximation of production or distribution cost variances to prior differentials—when demonstrated in good faith through any authoritative and sound accounting principles—[fol. 1252] suffice as a matter of law to meet the requirement for justification under the Section 2(a) cost proviso. Applied in this way, the Act should impede no price variation reasonably related to economies in any of the seller's costs deriving from significant differences among customers or broad categories of commercial transactions."

The Cost Justification Report at Page 6 expressly recognizes the "necessity for a broad approach in the administration of the cost proviso" and in discussing the meaning of the words "due allowance" as contained in the cost proviso, comments at Page 9 as follows:

"Believing that it was the legislative intent to permit sellers to pass on to customers the benefit of economies in manufacturing and distribution, the Committee feels that the correct interpretation of this phrase is of prime importance.

"In view of the plus-or-minus leeway which must be granted to all cost figures, as discussed later (Section III, A, 1), 'due allowance' should not be construed in every case to require full and complete cost justification of a price differential. It should be construed flexibly, so as to require only 'reasonable allowance' for cost differences based on sound accounting and pricing principles."

At Page 11, the Report states:

"Great weight should be given to cost studies made in good faith and in accordance with acceptable accounting doctrines. 'Great weight' should be interpreted as meaning that accounting principles relied on by a respondent should have an evidentiary value superior to an adverse theory of accounting unless the adverse theory is supported by a preponderance of evidence that the principles relied on by the respondent are not sound. A mere showing that a method other than that used by the respondent would produce narrower cost differences should not serve to overthrow an equally acceptable method used by the respondent."

And at Page 22, the Report concludes:

"The Committee recognized that the cost proviso of the Robinson-Patman Act operates in a complex area and that many of the problems to which it gives rise are [fol. 1254] not given to ready solution. Nevertheless, its significance as a means of lawfully reflecting economies of operation in lower prices to the benefit of the consuming public is apparent and every effort must be made to implement its important economic role."

Plaintiff contends that the case of *F.T.C. v. Simplicity Pattern Co., Inc.*, 360 U.S. 55, dictates that the cost proviso of Section 2(a) must be narrowly construed. However, I find that that opinion, resting solely upon the court's interpretation of Section 2(e) of the Act, is not pertinent here.

I might add here that it is my opinion that the Federal Trade Commission, in matters of accounting detail, is the tribunal possessing *expertise*. I am completely in accord with the suggestion made by the *Supreme Court in Brice's Juices v. American Can Co.*, 330 U.S. 743 at Page 745:

"It (The Robinson-Patman Act) indicates, too, that the Federal Trade Commission is the appropriate tribunal to hear in the first instance the complicated issues growing out of grievances against a quantity discount practice of a seller."

The above statements of the Courts, the Federal Trade [fol. 1255] Commission Report and the Report of the Attorney General's Committee, set forth the principles which

guide my decision as to the cost justification phase of this case.

I now consider the cost studies submitted by defendants to sustain their cost justification defenses:

### 1. *Bowman Studies:*

Bowman first maintains, and has attempted to show by studies, that plaintiff has engaged in a careful process of culling and grading of some 2,300 stores available for consideration by plaintiff in the Chicago area in order to show a discrimination among wholesale customers. Bowman contends this "culling and grading" process results in isolated examples of discrimination which are not representative of the situation throughout the Chicago area. Bowman has also submitted several cost studies conducted and analyzed primarily by Albert J. Bergfeld, an expert in the field, which purport to justify the different discounts granted to chains and independents. These studies, which are lengthy and detailed, conclude that the discount [fol. 1256] quotations are justified because of the difference in the cost of delivery between chain and independent stores.

With regard to the alleged price discriminations against bulk wholesale customers, Bowman contends that the price variations complained of were bona fide attempts to meet competition and were also justified by differences in delivery costs and has submitted a detailed cost study to this effect.

### 2. *Borden Study:*

The Borden Study conducted by J. F. Malone, an expert in the field, assisted by the accounting firm of Haskins and Sells, is a detailed analysis of route activities, branch office clerical activities and district central office activities and concludes in substance that the price discrimination against independent wholesale customers is justified by a consideration of direct and indirect costs.

With regard to the alleged price discriminations against bulk wholesale customers, Borden contends that the price variations complained of were justified

[fol. 1257] by differences in manufacturing costs due to differences in quantities of various products purchased and has submitted summary schedules to this effect.

The defendants have as well submitted by their briefs, a mass of material, much of which is argumentative, explaining and elaborating upon specific parts of the studies. For purpose of this memorandum it is sufficient to find, as I do, that the studies of both Bowman and Borden are products of extensive investigations of many customers within given areas and reflect the bona fide efforts of these defendants to determine differences in cost between various classes of their customers.

Plaintiff has made detailed criticisms of defendants' wholesale customer cost studies. Among other contentions, plaintiff argues: That defendants have given too broad an interpretation to the phrase "methods or quantities" as used in the cost proviso in preparing their cost studies; that defendants' own cost charts show that the discount differences between their store customers were not justified by cost differences; that Bowman cannot justify its discriminatory prices on the basis of any alleged cost differences resulting from the collection of C.O.D. payments or the rendering of "customer services" in connection with its [fol. 1258] milk deliveries; that Bowman and Borden "customer services" are prohibited by Sections 2(d) and 2(e) of the Clayton Act and outside the scope of Section 2(a); that the Bowman and Borden systems of cost allocations are unsound and improper on several grounds including the use of erroneous premises; statistically unsound standard time formulae and wrongful classification of various functions. Plaintiff has, as well, by Tables, submitted corrections of these alleged deficiencies in defendants' cost allocations.

Another principal criticism of the cost studies relates to their *seemingly* arbitrary nature. A customer who qualifies as a chain, for example, gets a flat discount regardless of volume purchased, while a customer who qualifies as an independent must reach a prescribed dollar volume in order to qualify for his discount.

Plaintiff has selected some isolated cases where this

seemingly arbitrary classification results in percentage discounts which do not bear a direct ratio to differences in volume of sales. However, this mode of classification is *not* wholly arbitrary—after all, most chain stores do purchase larger volumes of milk than do most independent stores. Some measure of business (or accounting) judgment must be used in determining the premises of a cost [fol. 1259] study, and I cannot now find that these defendants have determined premises for these studies which are improper. Certainly, the studies are imperfect in some respects, but any such cost studies, no matter with how much care and skill they are prepared, are bound to be imperfect.

Plaintiff contends with regard to defendants' bulk wholesale customers that Bowman failed to prove a bona fide meeting of competition as to its customers and also failed to prove a cost justification defense. Plaintiff contends that Borden failed to prove its cost justification defense.

Having fully considered all the evidence before me, as well as the schedules, summaries and tables and arguments relating thereto of the parties, I find that defendants have each made a bona fide effort to allocate their costs between different types of wholesale customers, and that such cost allocation is the sole reason for the alleged price discrimination. I find that the cost studies provide an adequate justification for the difference in prices described above in defendants' published discount quotations.

I further find that defendants' bulk cost studies provide an adequate justification for the difference in price described above with regard to the flat, net prices charged defendants' [fol. 1260] bulk wholesale customers.

I now consider whether a decree should be granted in accordance with the Government's prayer for relief. In reaching a decision on this question I have been guided, among other considerations, by the following:

1. As stated at the outset of this memorandum the practices described in the plaintiff's complaint apparently no longer are followed by the defendants. In any event, such practices would be relevant only to show the present state of the industry and to determine the likelihood of future violations occurring. As Mr. Justice Jackson stated in *U. S. v. Oregon Medical Society*, 343 U. S. 326, at Page 333:



"All it takes to make the cause of action for relief by injunction is a real threat of future violation or a contemporary violation of a nature likely to recur. This established, it adds nothing that the calendar of years gone by might have been filled with transgressions. Even where relief is mandatory in form it is to undo existing conditions, because otherwise they are likely to continue. In a forward-looking action [fol. 1261] such as this, an examination of 'a great amount of archeology' is justified only when it illuminates or explains the present and predicts the shape of things to come." The types of violations now alleged to exist are completely different from those described in the original complaint. No evidence was presented and no argument made that there is a *present* need for injunctive relief to cure such old practices.

Further, these old practices which were the subject of the 1953 trial have already been condemned by the terms of the *Dean* Decree. As I have already indicated, and as the Supreme Court has commented in this case, I am justified in considering *all* factors, as well as the *Dean* Decree, in arriving at this determination.

2. The various practices of which plaintiff *now* complains, consisting of alleged outright discrimination between classes of customers, are shown to have been adequately justified by the defendants' cost studies.

[fol. 1262] 3. The single question for determination in this phase of these proceedings is whether or not I should issue an injunction regulating *all* wholesale sales made by defendants. Such an injunction would, by its nature, be general and all inclusive. And, as the parties well know, in all probability, subsequent proceedings for enforcement, amendment and modification of the injunction would follow.

In short, I would regulate this particular phase of the industry and, in so doing, would continually be called upon to pass judgment on the pricing practices of these defendants. On the basis of the evidence presented, I feel that such a course is impractical and unwarranted.

I wish to make clear, however, that I have not given my stamp of approval to all pricing policies and practices revealed by the evidence. As I have indicated in other parts of this memorandum, these policies and practices have in many instances been imperfect.

Plaintiff is in no way prohibited from bringing these policies and practices to the attention of the Federal Trade Commission [fol. 1263] mission, which is, as the Supreme Court has pointed out, a more appropriate tribunal to grant effective relief, if it be warranted.

Accordingly, keeping in mind the admonition of the United States Supreme Court in this very case that:

"(T)he moving party must satisfy the Court that relief is needed. The necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive;"

I find that plaintiff has shown no need for the exercise of the Court's equitable powers and accordingly, the case must be, and is, hereby dismissed.

I adopt my Findings of Fact the Stipulations of Fact embodied in the pre-trial orders heretofore entered by me.

Further, in accordance with the provisions of Rule 52 of the Federal Rules of Civil Procedure, the facts and conclusions stated in this memorandum shall stand as additional findings of fact and conclusions of law.

Campbell, Chief Judge.

Dated: February 27, 1961.

[fol. 1264] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF  
ILLINOIS, EASTERN DIVISION

Civil Action No. 51 C 947

UNITED STATES OF AMERICA, Plaintiff,

v.

THE BORDEN COMPANY et al., Defendants

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED  
STATES—Filed April 28, 1961

I

Notice is hereby given that the United States of America, the plaintiff above named, hereby appeals to the Supreme Court of the United States from the final decree dismissing the complaint, entered in this action on February 27, 1961.

This appeal is taken pursuant to Title 15 U.S.C. § 29.

II

The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. All docket entries subsequent to October 27, 1953.
2. Complaint filed June 18, 1951.
- [fol. 1265] 3. Opinion and Mandate of United States Supreme Court, filed June 23, 1954.
4. Plaintiff's Motion to Open the Record for the Taking of Further Evidence and Plaintiff's Motion for Leave to Engage in Discovery, both filed January 11, 1955.
5. Motion of the State of Wisconsin for Leave to File Brief *Amicus Curiae*, filed January 11, 1955.
6. Plaintiff's Memorandum in Support of its Motion to Open the Record for the Taking of Further Evi-

- dence and in Support of its Motion for Leave to Engage in Discovery, filed January 17, 1955.
7. Response of The Borden Company, Bowman Dairy Company, Ridgeview Farms Dairy, Inc. and Belmont Dairy Company to Plaintiff's Motion to Open the Record for the Taking of Further Evidence, filed January 10, 1955.
  8. Memorandum of the State of Wisconsin in Support of its Motion for Leave to File a Brief *Amicus Curiae*, filed January 17, 1955.
  9. Brief of Defendants in Response to the Action of the State of Wisconsin for Leave to File Brief *Amicus Curiae*, filed January 27, 1955.
  10. Defendants' Memorandum in Opposition to the Government's Motion to Open the Record, and for Leave to Engage in Discovery, filed January 27, 1955.
  - [fol. 1266] 11. Plaintiff's Reply Memorandum in Support of its Motions to Open the Record and for Leave to Engage in Discovery, filed February 2, 1955.
  12. Supplement to Plaintiff's Motion to Open the Record for the Taking of Further Evidence, filed February 2, 1955.
  13. Memorandum of the State of Wisconsin in Reply to Defendants' Brief in Opposition to the State's Motion for Leave to File Brief *Amicus Curiae* and Brief of the State of Wisconsin, *Amicus Curiae*, filed February 2, 1955.
  14. Response to Supplement to Plaintiff's Motion to Open the Record, filed February 10, 1955.
  15. Plaintiff's Rebuttal Memorandum in Support of Plaintiff's Motion to Open the Record, filed February 15, 1955.
  16. Memorandum and Order that Government's Motion to Open the Record for Taking of Further Evidence is Granted; Government's Motion for Leave to Engage in Discovery Denied; Motion of the State of Wisconsin for Leave to File a Brief *Amicus Curiae* Denied; entered April 18, 1955.
  17. Supplemental Pre-Trial Order [as to Bowman Dairy Company], entered November 4, 1955.

18. Supplemental Pre-Trial Order [as to defendant The Borden Company], entered November 8, 1955, [fol. 1267].
19. Plaintiff's Exhibit 5 and Schedule IV [Copy of "Gorand's 1951 Edition Street Map of Chicago and Suburbs" showing location of Bowman's and Borden's store customers].
20. Additional Pre-Trial Order Relating to Plaintiff and Defendant The Borden Company, entered September 19, 1957.
21. Copy of Letter dated September 24, 1957 to Judge Campbell relating Plaintiff's Objections to Borden's Pre-Trial Order.
22. A Cost and Price Study of Certain Bulk Wholesale Customer Transactions, Bowman Dairy Company, dated March 1956 [Bowman Exhibit 42].
23. Manual for Establishing and Testing a Store Discount [Bowman Exhibit 4].
24. Discount Schedule Tests (March 1955) [Bowman Exhibit 14].
25. Test of Bracket Discount Plan Effective September 26, 1955 [Bowman Exhibit 15].
26. Test of Store Discount Plan, Effective January 2, 1956 [Bowman Exhibit 16].
27. Statistical Data Relative to Milk and Cream Purchases for Bowman Dairy Company Downtown Chicago Accounts March 1955 [Bowman Exhibits 41, 41 A, and 41 B].
28. Bowman Exhibits 5 through 13 entitled "Discount Schedules 1 through 9." [fol. 1268].
29. Bowman Exhibit 3 entitled "Survey of Food Store Competition."
30. Bowman Exhibits 1, 2, 3 AAA, 3 BBB, 17, and 17 A, filed December 23, 1957.
31. Supplemental Pre-Trial Order [as to Defendant Bowman Dairy Company], entered December 23, 1957.
32. Plaintiff's Rebuttal Pre-Trial Order as to The Borden Company, entered December 16, 1958 with Rebuttal Exhibits as to The Borden Company, Folders A, B, C, filed December 16, 1958.
33. Plaintiff's Rebuttal Pre-Trial Order as to Bowman Dairy Company, entered December 16, 1958 with

- Rebuttal Exhibits as to Bowman Dairy Company, Folders A, B, and C, filed December 16, 1958.
34. Final Pre-Trial Order [as to Borden], entered December 16, 1958.
  35. Supplemental Pre-Trial Order [Bowman], entered December 16, 1958.
  36. Depositions of: Herbert F. Taggart, April 14 and 15, 1958; Albert E. Sawyer, April 16, 1958; Otto F. Taylor, April 28 and 29, 1958; Elliott B. Woolley, June 23, 1958 and September 11, 1958, filed February 13, 1959. Joseph F. Malone, February 15, 1957, filed February 11, 1957. Albert Joseph Bergfeld, September [fol. 1269] her 6 and 7, 1956, filed October 30, 1956.
  37. Government Trial Exhibits Nos. 1538, 1539, 1540.
  38. Transcript of proceedings before Judge Campbell: July 1, 1954, May 16, 1955, and September 12, 1955;

Transcript of pre-trial proceedings:

|                    |                    |
|--------------------|--------------------|
| September 26, 1955 | March 7, 1957      |
| October 6, 1955    | May 17, 1957       |
| October 14, 1955   | September 19, 1957 |
| November 4, 1955   | November 6, 1957   |
| January 6, 1956    | December 3, 1957   |
| January 27, 1956   | March 14, 1958     |
| April 20, 1956     | May 16, 1958       |
| May 18, 1956       | September 12, 1958 |
| June 15, 1956      | October 31, 1958   |
| November 28, 1956  |                    |

39. Post Trial Brief for the United States, filed February 3, 1959.
40. Brief of The Borden Company in Opposition to Post Trial Brief of the United States and Appendix, filed April 13, 1959.
41. Post Trial Brief for the Bowman Dairy Company, filed April 13, 1959.
- [fol. 1270] 42. Government's Reply Brief to Post Trial Briefs of the Defendants Bowman Dairy Company and The Borden Company, filed June 2, 1959.
43. Brief of The Borden Company in Opposition to Post Trial Reply Brief of the United States, filed July 2, 1959.

44. Reply Brief of Bowman Dairy Company, filed July 14, 1959.
45. Letter dated July 31, 1959 to Judge William J. Campbell with copy of stipulation of March 17, 1953, attached, filed August 3, 1959.
46. Memorandum, Findings of Fact, Conclusions of Law and Decree, entered February 27, 1961.
47. This Notice of Appeal.

### III

The following questions are presented by this appeal:

The District Court found that defendants' pricing systems for the sale of their fluid milk products by which each of the individual grocery stores of a chain received a high, fixed discount regardless of the quantity of its purchases, but independent grocery stores received discounts dependent upon the volume of purchases and in no event as high as that provided to each of the chain stores, constituted a prima facie price discrimination in violation of the Robinson Patman amendment of Section 2(a) of the Clayton Act. It found, however, that these discriminations were cost justified on the basis of defendants' studies purporting to [fol. 1271] show the "differing methods or quantities" in which defendants' products were sold and delivered to the chain and independent stores respectively.

The District Court further found that defendants had discriminated in price in sales of fluid milk products to their respective restaurant customers and although such price discriminations constituted a prima facie violation of Section 2(a) of the Act, the defendants had met the burden of affirmatively justifying such discriminations under the "cost" proviso of Section 2(a).

The questions here presented are:

1. Whether defendants' pricing systems to chain and independent grocery stores can be cost justified under Section 2(a) of the Act and, if so, whether defendants met their statutory burden of affirmatively showing that their discriminatory pricing practices were based solely upon differences in cost resulting from the differing methods or quantities in which their products were sold or delivered.
2. Whether defendants met their statutory burden of



affirmatively showing that their discriminatory prices to restaurants were based solely upon differences in cost resulting from the differing methods or quantities in which their products were sold or delivered.

s. Earl A. Jinkinson, s. Dorothy M. Hunt, Attorneys, Department of Justice, Room 404, United States Courthouse, Chicago 4, Illinois. HARRISON 7-4700.

[fol. 1272] Acknowledgements of Service, (omitted in printing).

[fol. 1273] Affidavit of Proof of Service (omitted in printing).

[fol. 1274] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN  
DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 51 C 947

UNITED STATES OF AMERICA, Plaintiff-Appellant,

vs.

THE BORDEN COMPANY AND BOWMAN DAIRY COMPANY,  
Defendants-Appellees

DESIGNATION BY BOWMAN DAIRY COMPANY, DEFENDANT AP-  
PELLEE, OF ADDITIONAL PORTIONS OF THE RECORD TO BE IN-  
CLUDED IN THE TRANSCRIPT TO BE TRANSMITTED TO THE CLERK  
OF THE SUPREME COURT OF THE UNITED STATES—Filed May  
8, 1961

Pursuant to Rule 75(a) of the Rules of Civil Procedure for the United States District Court, Bowman Dairy Company, defendant-appellee, by its attorneys, hereby designates the following additional portions of the record in this

case, and requests the Clerk of this Court to include said additional items in the transcript to be transmitted to the Clerk of the Supreme Court of the United States:

1. Answers of Bowman Dairy Company and Ridgeview Farms Dairy, Inc. filed on September 19, 1952.

2. Order entered on February 9, 1959, dismissing Ridgeview Farms Dairy, Inc., as a party defendant.

3. Bowman Exhibit 18.

4. Bowman Exhibit 18-A.

5. Bowman Exhibit 19.

6. Bowman Exhibit 20.

7. Bowman Exhibit 21.

8. Bowman Exhibit 21-A.

9. Bowman Exhibit 21-B.

[fol. 1275] 10. Bowman Exhibit 22.

11. Bowman Exhibit 23.

12. Bowman Exhibit 24.

13. Bowman Exhibit 24-A.

14. Bowman Exhibit 25.

15. Bowman Exhibit 26.

16. Bowman Exhibit 27.

17. Bowman Exhibit 28.

18. Bowman Exhibit 29.

19. Bowman Exhibit 30.

20. Bowman Exhibit 31.

21. Bowman Exhibit 31-A.

22. Bowman Exhibit 31-B.

23. Bowman Exhibit 32.

24. Bowman Exhibit 33.

25. Bowman Exhibit 33-A.

26. Bowman Exhibit 34.

27. Bowman Exhibit 35.

28. Bowman Exhibit 35-A.

29. Bowman Exhibit 35-B.

30. Bowman Exhibit 36.

31. Bowman Exhibit 37.

32. Bowman Exhibit 40-A.

33. Bowman Exhibit 40-B.

34. Bowman Exhibit 40-C.

35. Bowman Exhibit 40-D.

36. Bowman Exhibit 40-E.

37. Bowman Exhibit 37-A.

- 38. Bowman Exhibit 38.
- 39. Bowman Exhibit 39.
- 40. Bowman Exhibit 39-A.
- 41. Bowman Exhibit 39-B.
- 42. Bowman Exhibit 40.

43. This designation by Bowman Dairy Company, defendant-appellee, of additional portions of the record to be included in the transcript to be transmitted to the Clerk of the Supreme Court of the United States.

44. Motion of Bowman Dairy Company pursuant to Rule 75(e) of the Rules of Civil Procedure of the United States District Court for an order directing that certain non-essential matter be omitted from the record to be transmitted to the Clerk of the Supreme Court of the United States, filed on May 8, 1951.

45. Any order that may be entered pursuant to the said motion number 44 above.

/s/ L. Edward Hart, /s/ John Paul Stevens, Attorneys for Bowman Dairy Company, Defendant-Appellee.

[fol. 1276] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN  
DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 51 C 947

Honorable William J. Campbell, Judge Presiding

UNITED STATES OF AMERICA, Plaintiff,

VS.

THE BORDON COMPANY, ET AL., Defendants

**Brief of Defendant the Borden Company in Opposition to  
the Post Trial Brief of The United States—Filed April  
13, 1959**

. . . . .

[fol. 1277] 2. SUMMARY SCHEDULE NO. I SHOWS THAT BORDON'S DISCOUNTS TO STORE CUSTOMERS ARE FULLY JUSTIFIED ON THE BASIS OF DIRECT CHARGES ALONE

The simplest of all cost accounting problems is the distribution of direct costs.

The various time studies of routemen's time, and of billing and accounting time, included in the Bordon cost study permit the direct assignment of large segments of the costs of sale and distribution between chain stores and independent stores. When a driver spends time at a particular store location giving service to that store, it is obvious that the cost of his time is directly chargeable to that store for cost study purposes. Professor Taggart agreed that activities which drivers perform at customers' premises are "direct costs to be allocated directly to the customers." (T.D. 70-71, App. 14.)

The actual cost of such time, of course, involves more than the mere compensation paid to the driver. Mr. Taylor pointed out, for example, that "vacation and all fringe benefits can also be allocated on a time basis." (O.T.D. 87-89, App. 46-47.)

The fact is that *every one of Borden's discounts can be justified on the basis of direct costs alone.* Rarely has a

discount schedule been so clearly and completely cost justified.

Summary Schedule No. I—"Cost Justification Based Solely on Direct Costs"—shows the assignment of direct costs. It is limited to costs which relate directly and exclusively to specific customers or classes of customers. This summary schedule appears on the next page.<sup>14</sup>

### EXPLANATION OF SUMMARY SCHEDULE NO. I

#### *Line One*

Line one of this schedule distributes the portion of the labor costs of operating the route which on a time basis can be charged directly against specific locations, and hence directly against classes of customers.

This includes the cost of the time spent on the route activities performed at specific stores as described as items 6 through 23 (APTO pp. 115-119), such as the time spent [fol. 1279] in carrying products into the various stores. It also includes the cost of the time spent at the end of the day in the activities described as items 38, 39, and 40. (APTO pp. 121-122.) The first two of these three items relate solely to chain store customers, and the last item relates solely to independent store customers.

The total direct labor cost of these activities (minutes times cost per minute) was \$17,065.24. This total is derived from Schedules XXVI and XXIX (APTO pp. 129, 135) as follows:

|                                  |             |                 |
|----------------------------------|-------------|-----------------|
| Schedule XXVI, column (e), total | \$ 6,285 45 |                 |
| column (g), total                | 9 253 82    |                 |
| column (h), total                | 168 07      | (items 38 & 39) |
| column (i), total                | 13 04       | (item 40)       |
| Schedule XXIX, column (c), total | 1,344 86    |                 |
| Total                            | \$17,065 24 |                 |

In line one, the total amount of \$17,065.24 appears in the appropriate column, and the amounts of \$6,432.52 and \$9,266.86 directly chargeable to chain stores and to independents, appear in the next two columns.

<sup>14</sup> Summary Schedules Nos. I through IV appearing in this brief are the same as those separately furnished to the Court for the Court's convenience.

The total charges to independents (\$9,266.86) is then broken down in the next four columns between the four classes of independent stores.

In the last column appears the total (\$1,344.86) chargeable directly against non-store customers as shown by Schedule XXIX. (APTO p. 135.)

*Line Two*

Line two sets forth the labor costs of special deliveries which are directly chargeable to classes of customers on a time basis. The total amount of such direct charges is \$72.59, which appears on Schedule XXXI. (APTO p. 142.) The amounts of such expense directly chargeable to each class of customer also appear in Schedule XXXI.

[fol. 1280]

SUMMARY SCHEDULE NO. I  
Cost Justification Based Solely on Direct Costs

|               |  | Independent Stores |                     |                    |                    |                    |                    |                    |                        |
|---------------|--|--------------------|---------------------|--------------------|--------------------|--------------------|--------------------|--------------------|------------------------|
|               |  | Total<br>Cost      | Chain<br>Stores     | Total              | Discount Schedule  |                    |                    |                    | Non-Store<br>Customers |
|               |  |                    |                     |                    | 0%                 | 2%                 | 3%                 | 4%                 |                        |
| Direct Costs: |  |                    |                     |                    |                    |                    |                    |                    |                        |
| 1.            | Routemen's direct labor costs.....       | \$17,065.24        | \$ 6,453.52         | \$ 9,266.86        | \$ 1,143.26        | \$3,543.24         | \$ 2,932.15        | \$ 1,648.21        | \$ 1,344.86            |
| 2.            | Special delivery direct labor costs..... | 72.59              | 36.66               | 18.20              | 1.29               | 3.28               | 4.53               | 9.10               | 17.73                  |
| 3.            | Branch office clerical salaries.....     | 2,355.51           | 649.79              | 1,274.55           | 325.66             | 546.14             | 295.64             | 107.11             | 431.17                 |
| 4.            | Billing department.....                  | 466.15             | 356.38              | 42.29              | 12.54              | 18.33              | 8.86               | 2.56               | 67.48                  |
| 5.            | Credit department.....                   | 60.72              | 1.30                | 9.37               | 2.78               | 4.06               | 1.96               | .57                | 50.05                  |
| 6.            | Accounting department.....               | 21.72              | 8.25                | 13.47              | 3.99               | 5.84               | 2.82               | .82                |                        |
| 7.            | Robert F. White & Company.....           | 140.83             |                     | 140.83             | 41.76              | 61.04              | 29.51              | 8.52               |                        |
| 8.            | Tabulating department.....               | 57.20              | 12.12               | 45.08              |                    | 27.77              | 13.43              | 3.88               |                        |
| 9.            | Bad debt losses.....                     | 31.58              |                     | 31.42              | 9.32               | 13.62              | 6.58               | 1.90               | .16                    |
| 10.           | Loss on returned products.....           | 2,213.82           | 1,139.20            | 972.87             | 109.65             | 391.19             | 304.31             | 167.72             | 101.75                 |
| 11.           | Salesmen's and solicitors salaries.....  | 2,065.83           |                     | 2,065.83           | 135.10             | 691.64             | 752.17             | 486.92             |                        |
| 12.           | Total direct costs.....                  | <u>\$24,551.19</u> | <u>\$ 8,657.22</u>  | <u>\$13,880.77</u> | <u>\$ 1,785.35</u> | <u>\$ 5,306.15</u> | <u>\$ 4,351.96</u> | <u>\$ 2,437.31</u> | <u>\$ 2,013.20</u>     |
| 13.           | Sales Volume.....                        |                    | <u>\$195,262.07</u> | <u>\$98,672.52</u> | <u>\$ 6,554.77</u> | <u>\$33,051.13</u> | <u>\$35,899.27</u> | <u>\$23,167.35</u> |                        |
| 14.           | Cost Per \$100.00 of Sales.....          |                    | <u>\$4.43</u>       | <u>\$14.07</u>     | <u>\$27.24</u>     | <u>\$16.05</u>     | <u>\$12.12</u>     | <u>\$10.52</u>     |                        |



[fol. 1281]

*Line Three*

Line three sets forth certain branch office clerical costs. These costs relate to the activities listed in Schedule XXXIII. (APTO p. 151.) The total of these costs was \$2,355.51. (APTO pp. 148-149.) The total figure is given in paragraph 237. (APTO p. 149.)

The costs of certain of these activities, totaling \$448.76, were directly chargeable either to chain stores or to independent stores and non-store customers on a time basis. (APTO, pars. 239-241, pp. 149-150.)

The costs of the rest of these activities (\$1,906.75) were spread on a stop basis—that is, divided between classes of customers on the basis of the number of deliveries made to stores in each classification. (See definition of a “stop” basis, APTO p. 113.) Most of these were clerical activities dealing with sales accounting, such as posting sales to office ledger, balancing routemen’s orders against sales, and recapping daily sales by product. (APTO p. 151.)

The units of activity were too small to justify the cost of a time study to measure the fractional amounts of time spent directly related to specific customers or classes of customers. Here the principle of finding a measure which is equivalent to actual time comes into play. As the Cost Justification Report states:

“However, for cost justification purposes, time does not always have to be actually measured. In fact, logical inferences concerning time may often be accepted in measuring cost. For example, under typical circumstances, it may be assumed that it takes a uniform amount of time to prepare each invoice line, regardless of the article sold or the quantity of articles represented. Under such conditions, the invoice line becomes a valid unit of measure of human effort.” (C.J.R. 13.)

[fol. 1282] With respect to these clerical activities, the number of “stops” was used as the “unit of measure of human effort.” This was on the assumption that each delivery to a store—or “stop”—constituted a single order covering a similar list of products, or constituted a single

total *sale* to a single customer. Thus the "stop" constituted a valid unit measure of the work performed.

Such a measure is customary for distributing sales accounting expenses. The Cost Justification Report lists as the units to be used in distributing the costs of a "sales accounting" function the following: number of orders or invoices, or invoice lines, number of transactions, number of accounts. The "stops" used by Borden are equivalent in effect to the "number of orders"; they are also equivalent to the number of "invoices", or sales tickets created; they are also equivalent to the "invoice lines", since the merchandise delivered at each stop ordinarily included the same assortment of products; and they were also equivalent to "number of transactions", since each stop completed a separate sales transaction.

#### *Line Four*

Line four sets forth the costs of the billing department in the division main office. The activities of this department were directly identifiable on a time basis as between chain stores, independent stores, and non-store customers, as the report form (Exhibit VII, APTO p. 153) and the analysis (APTO p. 154) make clear.

The amount of this expense chargeable to the three main customer classifications is set forth in paragraph 249 (APTO p. 154), and these amounts are carried forward into line four of Summary Schedule No. I. Only a small amount of this expense was chargeable to independent stores (\$42.29). Because of the small amount, this expense [fol. 1283] has been allocated between classes of independent stores on a location basis.<sup>15</sup> (APTO p. 126.)

#### *Line Five*

Line five sets forth expenses incurred in the division main office credit department. The weekly costs of this de-

<sup>15</sup> Direct costs of a minor nature are often so allocated because "Establishment and maintenance of the necessary bookkeeping routines for isolating all direct costs is burdensome and is justified only when amounts involved are appreciable and satisfactory results cannot be obtained by other and less expensive methods." (C.J.R. 27-28.)

partment for time spent on exclusively wholesale functions averaged only \$64.82, of which \$60.72 was allocable to the wholesale customers on the 134 routes covered by the cost study. (APTO p. 155.) This amount was directly chargeable on a time basis to the three main customer classifications—chain stores, independent stores, and non-store customers. (APTO pp. 155-156.) The small amount chargeable to independent stores (\$9.37) was in turn allocated between discount classes on a location basis.

#### *Line Six*

Line six covers a small item of \$21.72 representing the weekly cost of supervising the preparation of discount checks. This was allocated between chain stores and independent stores on a direct time basis. (APTO p. 156.)

#### *Line Seven*

Line seven covers a charge for outside computing services in compiling data used in computing discounts to *independent stores*. (APTO p. 156.) This entire charge was directly applicable to independent stores. It was allocated between the discount classes on a location basis. (APTO pp. 156-157.)

[fol. 1284]

#### *Line Eight*

Line eight covers expenses of the tabulating department directly chargeable on a time basis to chain stores and independent stores. Again, the small amount chargeable against the independent stores (\$45.08) was allocated between the classes of independent stores receiving discounts on a location basis. (APTO pp. 157-159.)

#### *Line Nine*

Line nine sets forth the weekly average of bad debt losses ascribed to wholesale customers. All of these losses for the six years studied were ascribable to independent store and non-store customers; hence, these losses were directly chargeable to those two customer classes. The small amount of costs directly chargeable to independent stores (\$31.42) was in turn allocated between classes of independent stores on a location basis. (APTO pp. 159-160.)

*Line Ten*

Line ten covers the cost on returned products. The report forms used in the cost study were designed to record the returned goods for each location. (Exhibit III, APTO pp. 93-94.) However, it proved to be physically impossible for the time study men to record this information. (APTO p. 95.) Since practical considerations required that a substitute measure be found, the measure used was the time spent by drivers in gathering returned merchandise at each store, because the time so spent was proportional to the quantities returned. (APTO pp. 160-161.) The figures set forth in line ten are listed at the top of page 161 of APTO.

[fol. 1285]

*Line Eleven*

Line eleven sets forth the costs of "salesmen's and solicitors' salaries" charged to accounts 721 and 723 23 26. (APTO p. 68.) The activities of the "solicitors" are described in paragraphs 112 MD and 113 MD of the cost study. (APTO pp. 70-71.) Since these solicitors solicit the business of independent store accounts, both new and old, but do *not* solicit the business of chain stores (APTO p. 71), the cost of their salaries is directly chargeable to the independent stores.

This cost on a monthly basis was \$2,065.83. (Schedule XXIII, APTO p. 75.) The measure selected for distribution of this cost between classes of independent stores was the sales volume of each class.<sup>16</sup> This was done because the time spent by solicitors was proportionate to the volume of business of the customer or prospective customer. This results in a proportionally equal allocation of this cost to each class of independent store customers.

*Line Twelve*

Line twelve sets forth the totals of the above weekly direct costs by class of customer.

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<sup>16</sup> This distribution does not appear in the pre-trial orders, but is a simple, mathematical computation based on the amount of dollar sales by classes of independent customers shown in Schedule XXXIV. (APTO p. 163.)

*Line Thirteen*

Line thirteen sets forth the weekly dollar sales to each class of customer. This information appears in Schedule XXXIV. (APTO p. 163.)

[fol. 1286]

*Line Fourteen*

Line fourteen sets forth the direct costs assigned to each class of customer expressed in dollars of costs per hundred dollars of sales. This is a simple mathematical computation, made by dividing the dollars of costs shown in line twelve by the dollars of sales shown in line thirteen, and moving the decimal point two places.

### How Summary Schedule No. I Proves that the Discounts Given by Borden Were Fully Cost Justified

Summary Schedule No. I demonstrates that all of the discounts given to store customers by Borden were more than justified by differences in the direct costs of sale and delivery to the various classes of customers.

Concentration of attention on direct costs alone is a proper and sound method:

"It is well to note that in some circumstances a very simple cost analysis is the best one. If the price differential is based entirely on some characteristic of the transaction whose cost can be directly measured, attention may be directed at that item of cost and at no other." (C.J.R. 15.)

Here the price differential was obviously granted in recognition of the marked differences in the direct costs of sale and delivery; hence, if the Borden cost study had been limited entirely to a study of direct costs of sale and delivery, it would have been sufficient.

The following table, constructed from the data set forth in Summary Schedule No. I, graphically illustrates the comparisons:

[fol. 1287]

Table 1

|  | Differences<br>in costs per<br>\$100 of<br>sales | Amount<br>necessary<br>to justify<br>discount | Amount<br>of over-<br>justification |
|--|--|---|-------------------------------------|
| 1. Between chain stores and independents getting no discount (\$27.24 less \$4.43) | \$22.81  | \$8.50 <sup>17</sup>                          | \$14.31                             |
| 2. Between chain stores and independents getting 2% discount (\$16.05 less \$4.43) | \$11.62  | \$6.50  | \$ 5.12                             |
| 3. Between chain stores and independents getting 3% discount (\$12.12 less \$4.43) | \$ 7.69  | \$5.50  | \$ 2.19                             |
| 4. Between chain stores and independents getting 4% discount (\$10.52 less \$4.43) | \$ 6.09  | \$4.50  | \$ 1.59                             |

This table demonstrates that the discounts attacked by plaintiff were fully cost justified on the basis of direct costs alone.

No account need be taken of any joint and indirect costs whatsoever in order to establish the defense of cost justification. Thus there is no need to debate the relative virtues of one or another of the possible yardsticks used to allocate such joint or indirect costs.

**3. SUMMARY SCHEDULE NO. II SHOWS THAT THE MARGIN OF COST JUSTIFICATION WHEN INDIRECT ROUTE LABOR COSTS AND OVERHEAD COSTS ARE DISTRIBUTED TO FOLLOW DIRECT COSTS IS SO GREAT AS TO ELIMINATE ALL DOUBTS AS TO THE SUFFICIENCY OF THE COST DIFFERENTIALS TO JUSTIFY THE DISCOUNTS**

Summary Schedules Nos. II and III have been prepared in order to demonstrate that, on any of several bases, an allocation of indirect costs will increase rather than decrease the cost differentials established by the distribution of direct costs.

Summary Schedule No. II is based on the use of the common and approved method of permitting indirect costs which are related to the direct costs to be allocated to follow the application of direct costs.

<sup>17</sup> A discount of 8½% equals \$8.50 on each \$100 of sales.

[fol. 1288] a. *Use of the Distribution of Direct Costs as a Measure of Allocating Related Indirect Costs Is a Rational and Accepted Method.*

One of the most common methods of cost allocation is to ascertain the costs directly chargeable to different purchasers, commodities, or transactions, and then let indirect costs closely related to the direct costs be allocated in the same proportion. Here the "service unit" or measure used in allocating such indirect costs is the distribution of the costs which are directly chargeable.

Textbooks and plaintiff's witnesses unite in their approval of this method of allocation. Thus Professor Taggart testified:

"Certain indirect costs are permitted to follow the direct. This means that the way in which direct costs are applied may reasonably be used as a service unit for allocating such indirect costs." (App. 11 summarizing T.D. 50-51.)

Plaintiff's witness Taylor also agreed that:

"Sometimes indirect costs can be permitted to follow direct costs." (App. 43 summarizing O.T.D. 207.)

The list of suggested service unit for allocating the costs of various distribution functions given by the Cost Justification Report (C.J.R. 28) contains numerous examples of the use of direct costs as a measure for allocating indirect costs. Thus, speaking of the function of "Operating Service", the Cost Justification Report suggests that it be "treated as overhead of selling and technical service function and allocated on same basis." As Professor Taggart admitted,

"The method just described is certainly a common method of allocating operating service costs." (App. 11 summarizing T.D. 61-64.)

[fol. 1289] Similarly, speaking of the function of "Sales Management", the Cost Justification Report suggests that it be,



"treated as overhead of the functions managed, and allocated either on basis of all costs previously charged or on basis of payroll of persons supervised." (C.J.R. 28.)

Professor Taggart also pointed to examples given in the section of the Accountants' Handbook on "Distribution Costs" (of which he was the author), which suggest that overhead or indirect costs be allocated on the basis of letting them "follow direct costs or previously allocated expenses". (T.D. 60-61; App. 11.)

Mr. Malone, who was intimately familiar with the operations of the dairy business, testified that the indirect routemen and truck expenses may be allocated to specific customers "in proportion to the costs directly chargeable to such customers on a time basis". (APTO p. 122.) These costs included the cost of routemen's activities in preparing their trucks for the day's work, in driving to and from the route area, and the like—matters which will be spoken of hereafter as "routemen's indirect labor costs". The costs referred to also include the expenses of maintaining and operating the delivery trucks, which will be referred to hereafter as "wholesale truck costs". Mr. Malone also stated that

"it would be entirely proper to allocate all of these cost elements listed in paragraph 110 of this Order in proportion to the ascertainable direct costs to individual customers and classifications of customers, and that such method of allocation would be entirely consistent with, and fully justified by, standard cost accounting practices." (APTO p. 72.)

These costs include overhead expenses incurred in the Irving Park and Englewood branches, such as "Salaries-Supervision" and the like, charged to the accounts tabu-[fol. 1290] lated in paragraph 110. (APTO pp. 68-70.) The average weekly charges to these accounts are set forth in Schedule XXIII. (APTO pp. 75-76.)

Another type of costs which may properly be allocated on the basis of direct costs is the general overhead and administrative costs of the Chicago Milk Division main office, so far as those costs are allocable to the wholesale

routes operated out of the Englewood and Irving Park branches. These expenses are listed and analyzed in Schedule XXXV. (APTO p. 7.)

Summary Schedule No. II, appearing on the next page, shows the results where this well recognized accounting principle is followed.

### Explanation of Summary Schedule No. II

#### *Lines One Through Twelve*

Lines one through twelve are identical with the same lines appearing on Summary Schedule No. I.

#### *Line Thirteen*

Line thirteen first sets forth the total route indirect labor costs (\$12,177.26), which amount is composed of the total costs of the activities described as items 1 through 5, and 24 through 37. (APTO pp. 114-115, 119-121.) The cost of the time devoted to these activities is set forth in Schedules XXVI and XXIX (APTO pp. 129, 135), as follows:

[fol. 1291]

## SUMMARY SCHEDULE No. II

Cost Justification Based on Allocation of Major Indirect and Overhead Costs on Basis of Direct Cost

|  | Grand<br>Total | Chain<br>Stores | Sub-total<br>Independent<br>Stores | Independent Stores by Discount Schedule Class |             |             |             | Non-store<br>Customers |
|--|----------------|-----------------|------------------------------------|---|-------------|-------------|-------------|------------------------|
|  |                |                 |                                    | 0%  | 2%          | 3%          | 4%          |                        |
| <b>Direct Costs:</b>   |                |                 |                                    |   |             |             |             |                        |
| 1. Routemen's direct labor.....                                | \$17,065 24    | \$ 6,453 52     | \$ 9,266 86                        | \$ 1,143 26                                   | \$ 3,543 24 | \$ 2,932 15 | \$ 1,648 21 | \$ 1,344 86            |
| 2. Special delivery direct labor.....                          | 72 59          | 36 66           | 18 20                              | 1 29  | 3 28        | 4 53        | 9 10        | 17 73                  |
| 3. Branch office clerical.....                                 | 2,355 51       | 649 79          | 1,274 55                           | 325 66  | 546 14      | 295 64      | 107 11      | 431 17                 |
| 4. Billing department.....                                     | 466 15         | 356 38          | 42 29                              | 12 54   | 18 33       | 8 86        | 2 56        | 67 48                  |
| 5. Credit department.....                                      | 60 72          | 1 30            | 9 37                               | 2 78  | 4 06        | 1 96        |             | 50 05                  |
| 6. Accounting department.....                                  | 21 72          | 8 25            | 13 47                              | 3 99  | 5 84        | 2 82        |             |                        |
| 7. Robert F. White & Company.....                              | 140 83         |                 | 140 83                             | 41 76   | 61 04       | 29 51       | 8 52        |                        |
| 8. Tabulating department.....                                  | 57 20          | 12 12           | 45 08                              |   | 27 77       | 13 43       | 3 88        |                        |
| 9. Bad debt losses.....  | 31 58          |                 | 31 42                              | 9 32  | 13 62       | 6 58        | 1 90        | 16                     |
| 10. Loss on returned products.....                             | 2,213 82       | 1,139 20        | 972 87                             | 109 65  | 391 19      | 304 31      | 167 72      | 101 75                 |
| 11. Salesmen and solicitors.....                               | 2,065 83       |                 | 2,065 83                           | 135 10  | 691 64      | 752 17      | 486 92      |                        |
| 12. Total direct costs.....                                    | \$24,551 19    | \$ 8,657 22     | \$13,880 77                        | \$ 1,785 35                                   | \$ 5,306 15 | \$ 4,351 96 | \$ 2,437 31 | \$ 2,013 20            |
| <b>Indirect Costs:</b>   |                |                 |                                    |   |             |             |             |                        |
| 13. Routemen's indirect labor.....                             | \$12,177 26    | \$ 4,293 70     | \$ 6,885 02                        | \$ 885 41                                     | \$ 2,632 14 | \$ 2,158 45 | \$ 1,209 02 | \$ 998 54              |
| 14. Special delivery indirect labor.....                       | 271 69         | 95 80           | 153 61                             | 19 75   | 58 73       | 48 16       | 26 97       | 22 28                  |
| 15. Wholesale truck costs.....                                 | 7,508 89       | 2,647 63        | 4,245 53                           | 545 98  | 1,623 07    | 1,330 97    | 745 51      | 615 73                 |
| 16. Total indirect delivery costs.....                         | \$19,957 84    | \$ 7,037 13     | \$11,284 16                        | \$ 1,451 14                                   | \$ 4,313 94 | \$ 3,537 58 | \$ 1,981 50 | \$ 1,636 55            |
| 17. Total direct and indirect sales and<br>delivery costs..... | \$44,509 03    | \$15,694 35     | \$25,164 93                        | \$ 3,236 49                                   | \$ 9,620 09 | \$ 7,889 54 | \$ 4,418 81 | \$ 3,649 75            |
| <b>Overhead Expense:</b>                                       |                |                 |                                    |   |             |             |             |                        |
| 18. Advertising allowance.....                                 | \$ 2,098 34    | \$ 1,303 74     | \$ 671 42                          | \$ 43 91                                      | \$ 224 72   | \$ 244 53   | \$ 158 26   | \$ 123 18              |
| 19. Branch overhead expense.....                               | 20,753 42      | 7,317 66        | 11,733 98                          | 1,508 99                                      | 4,485 90    | 3,678 60    | 2,060 49    | 1,701 78               |
| 20. Soda straws, etc.....                                      | 57 34          |                 |                                    |   |             |             |             | 57 34                  |
| 21. General and administrative expenses.....                   | 4,327 59       | 1,525 91        | 2,446 82                           | 314 66  | 935 42      | 767 08      | 429 66      | 354 86                 |
| 22. Total overhead expense.....                                | \$27,236 69    | \$10,147 31     | \$14,852 22                        | \$ 1,867 56                                   | \$ 5,646 04 | \$ 4,690 21 | \$ 2,648 41 | \$ 2,237 16            |
| 23. Grand Total Costs.....                                     | \$71,745 72    | \$25,841 66     | \$40,017 15                        | \$ 5,104 05                                   | \$15,266 13 | \$12,579 75 | \$ 7,067 22 | \$ 5,886 91            |
| 24. Costs Per \$100.00 of Sales.....                           |                | \$13 23         | \$40 56                            | \$77 87                                       | \$46 19     | \$35 04     | \$30 51     |                        |

|                                       |                         |
|---------------------------------------|-------------------------|
| [fol. 1292] Schedule XXVI, column (h) | \$ 845.14 <sup>18</sup> |
| Schedule XXVI, column (i)             | 4,398.76 <sup>19</sup>  |
| Schedule XXVI, column (j)             | 1,071.24                |
| Schedule XXVI, column (k)             | 3,728.50                |
| Schedule XXIX, column (d)             | 2,133.62                |
|                                       | <hr/>                   |
|                                       | \$12,177.26             |

These activities were those not clearly chargeable directly to specific customers, such as driving to and from the route area (item 25), icing the truck before starting to the route (item 3) and parking it at the end of the day (item 32).

In line thirteen, this amount of \$12,177.26 is allocated between classes of customers in the same proportion as the total direct expenses were charged, as shown by line twelve.

#### *Line Fourteen*

Line fourteen takes the total indirect expense of special deliveries, shown as the total of column (c) on Schedule XXXI (APTO p. 142), amounting to \$271.69, and allocates this expense between classes of customers in the same proportion as the total direct costs shown in line twelve were charged.

#### *Line Fifteen*

Line fifteen starts with the average weekly costs of operating the wholesale route trucks, amounting to \$7,508.89, shown on Schedule XXXII. (APTO p. 145.) This joint cost is then allocated among classes of store customers in proportion to the direct costs of route operation as shown in line twelve.

[fol. 1293]

#### *Line Sixteen*

Line sixteen sets forth the total of the indirect delivery costs recorded in lines thirteen, fourteen, and fifteen.

<sup>18</sup> This is the total of column (h) (\$1,013.21) less \$168.07 covering items 38 and 39.

<sup>19</sup> This is the total of column (i) (\$4,411.80) less \$13.04 covering item 40.

*Line Seventeen*

Line seventeen sets forth the total direct and indirect sales and delivery costs computed by adding the figures in line twelve to those in line sixteen.

*Line Eighteen*

Line eighteen sets forth the charges to accounts 721 and 723-23-2-299, "Advertising allowance to stores". (APTO p. 70.) This allowance was "available on the same terms to all store customers." (APTO p. 70.) The weekly average of this expense was \$2,098.34, as shown by Schedule XXIII. (APTO p. 76.) Since these allowances were based directly on the volume of products sold, this expense is allocated to classes of store customers in proportion to the volume of sales as shown by Schedule XXXIV. (APTO p. 163.)

*Line Nineteen*

Line nineteen covers the balance of the overhead expenses charged to the branch accounts listed in paragraph 110. (APTO pp. 68-70.) The total weekly average of the charges for these expenses listed in Schedule XXIII is \$24,974.93. (APTO p. 76.) However, this amount includes three types of expenses which have to be deducted from the total given above before the allocation of the resulting balance in line nineteen. These deductions are as follows:

- (1) The charges to accounts 721 and 723-23-2-97 and 171 are described in paragraph 109 (APTO p. [fol. 1294] 68) and were for soda straws and automatic vending machine maintenance. These charges do not apply to store customers, and hence were deducted from the total figure of \$24,974.93 mentioned above. The total weekly average of these two items of expense was \$57.34 (\$46.58 plus \$10.76), which figures appear in Schedule XXIII. (APTO p. 75.) This amount appears in line 20.
- (2) The weekly average charges for "advertising allowances" of \$2,098.34, set forth in line eighteen, were included in the total of \$24,974.93 in Sched-

ule XXIII and hence had to be deducted to avoid duplication.

- (3) The total figure of \$24,974.93 also included the \$2,065.83 weekly average salaries and wages of solicitors charged to accounts 721 and 723-23-2-6 which have already been set forth at line eleven. This amount again had to be deducted to avoid duplication.

The balance after these three deductions is \$20,753.42, which is the amount set forth in line nineteen and allocated on the basis of the direct expenses shown in line twelve.

#### *Line Twenty*

Line twenty accounts for the \$57.34 explained above, and is the amount of charges for soda straws and automatic vending machine maintenance. This figure is set forth solely for the sake of completeness.

#### *Line Twenty-One*

Line twenty-one sets forth the general and administrative expenses of the Chicago Milk Division which are listed and described in Schedule XXXV. (FPTO p. 7.) The [fol. 1295] total weekly average amount of these expenses applicable to the surveyed routes was \$5,074.21, as is shown by that Schedule. From this amount the sum of \$746.62 of direct costs of this Chicago Milk Division, already set forth in lines four, five, six, seven and eight, was deducted. The balance of \$4,327.59 was allocated on the basis of the direct expense shown in line twelve.

#### *Line Twenty-two*

Line twenty-two sets forth the total of the overhead expenses listed in lines eighteen, nineteen, twenty, and twenty-one.

#### *Line Twenty-three*

Line twenty-three gives the grand total of all costs, and is computed by adding the amounts appearing in lines twelve, seventeen, and twenty-two.

### *Line Twenty-four*

Line twenty-four computes the totals of all expenses appearing in line twenty-three in terms of dollars of costs per \$100 of sales. This is computed in the same manner as line fourteen of Summary Schedule No. I.

### How Summary Schedule No. II Proves That the Discounts Given by Borden Were Fully Cost Justified

Summary Schedule No. II shows that an analysis of indirect and overhead costs, and an allocation of those costs on the basis of direct costs, strengthens and confirms the conclusion to be drawn from Summary Schedule No. I. This is true even though care was taken to segregate costs, such as advertising allowances, which could not properly be allocated on these bases; and care was taken to eliminate costs, such as those for soda straws, which were not applicable to store customers.

[fol. 1296] The following table, constructed from the data set forth in Summary Schedule No. II, shows the wide margins by which the discounts are justified by this method of distributing costs:

Table 2

|   | Differences<br>in costs per<br>\$100 of<br>sales | Amount<br>necessary<br>to justify<br>discount | Amount<br>of over-<br>justification |
|---|--|---|-------------------------------------|
| 1. Between chain stores and independents getting no discounts (\$77.87 less \$13.23)... | \$64 64  | \$8 50  | \$56 14                             |
| 2. Between chain stores and independents getting 2% discount (\$46.19 less \$13.23)...  | \$32 96  | \$6 50  | \$26 46                             |
| 3. Between chain stores and independents getting 3% discount (\$35.04 less \$13.23)...  | \$21 81  | \$5 50  | \$16 31                             |
| 4. Between chain stores and independents getting 4% discount (\$30.51 less \$13.23)...  | \$17 28  | \$4 50  | \$12 78                             |

Professor Taggart, in writing in the Accountants' Handbook about the cost justification accepted by the Federal Trade Commission in the *Matter of Bird and Son*, 25 F. T. C. 548 (1937), where, as here, large differentials in direct costs were shown, commented that

"the justification presented was very sweeping. No amount of quibbling over precise methods of allocation would have substantially affected the conclusion."



In the present case, the cost justification shown in Summary Schedules Nos. I and II is "very sweeping" and "quibbling over precise methods of allocation" will not change the result.

[fol. 1297] 4. SUMMARY SCHEDULE NO. III SHOWS THAT, EVEN WHEN BRANCH OVERHEAD AND GENERAL ADMINISTRATIVE EXPENSES ARE DISREGARDED, AND INDIRECT DELIVERY COSTS ARE ALLOCATED ON A "STOP" BASIS, THE DISCOUNTS GRANTED BY BORDEN WERE COST JUSTIFIED BY SO WIDE A MARGIN AS TO PRECLUDE ANY CHALLENGE.

Summary Schedule No. II demonstrated that the use of direct costs as the yardstick for the measurement and allocation of closely related indirect and overhead costs confirms and emphasizes the wide margin by which Borden's discounts were cost justified.

The question next arises whether the use of other reasonable and common service units would corroborate or rebut the inferences to be drawn from the analyses already presented.

One basis of allocating indirect delivery costs suggested in the cost study was the "stop" basis, which consists of dividing the costs of a particular activity by the total number of deliveries made to customer locations during the weeks in which the routes were surveyed. (APTO p. 113.) The number of "stops" by customer location is set forth in paragraph 202. (APTO p. 126.)

"Stops" are equivalent to "deliveries," or "orders," since each "stop" resulted in a single "delivery," and thus in the filling of a customer's "order." As will be demonstrated later (*post*, pp. 91-93), the use of "stops," "deliveries," or "orders" as the service or measuring unit is a common and well-recognized method of allocating delivery costs.

Summary Schedule No. III is based on the use of the "stop" basis to allocate all indirect route labor and truck costs and is found on the next page.

[fol. 1298]

## SUMMARY SCHEDULE NO. III

Cost Justification on the Basis of Direct Costs Plus Indirect Delivery Costs Allocated on the Basis of Number of Deliveries

|   | Total       | Stores      | Sub-total<br>Independent<br>Stores | Independent Stores by Discount Schedule Class |             |             |             | Non-store<br>Customers |
|---|-------------|-------------|------------------------------------|---|-------------|-------------|-------------|------------------------|
|   |             |             |                                    | 0%  | 2%          | 3%          | 4%          |                        |
| Direct Costs:   |             |             |                                    |   |             |             |             |                        |
| 1. Routemen's direct labor                            | \$17,065 24 | \$ 6,453 52 | \$ 9,266 86                        | \$ 1,143 26                                   | \$ 3,543 24 | \$ 2,932 15 | \$ 1,648 21 | \$ 1,344 86            |
| 2. Special delivery direct labor                      | 72 59       | 36 86       | 18 20                              | 1 29  | 3 28        | 4 53        | 9 10        | 17 73                  |
| 3. Branch office clerical                             | 2,355 51    | 649 79      | 1,274 55                           | 325 66  | 546 14      | 295 64      | 107 11      | 431 17                 |
| 4. Billing department                                 | 466 15      | 356 38      | 42 29                              | 12 54   | 18 33       | 8 86        | 2 56        | 67 48                  |
| 5. Credit department                                  | 60 72       | 1 30        | 9 37                               | 2 78  | 4 06        | 1 96        |             | 50 05                  |
| 6. Accounting department                              | 21 72       | 8 25        | 13 47                              | 3 99  | 5 84        | 2 82        | 82          |                        |
| 7. Robert F. White & Company                          | 140 83      |             | 140 83                             | 41 76   | 61 04       | 29 51       | 8 52        |                        |
| 8. Tabulating department                              | 57 20       | 12 12       | 45 08                              |   | 27 77       | 13 43       | 3 88        |                        |
| 9. Bad debt losses                                    | 31 58       |             | 31 42                              | 9 32  | 13 62       | 6 58        | 1 90        | 16                     |
| 10. Loss on returned products                         | 2,213 82    | 1,139 20    | 972 87                             | 109 65  | 391 19      | 304 31      | 167 72      | 101 75                 |
| 11. Salesmen and solicitors                           | 2,065 83    |             | 2,065 83                           | 135 10  | 691 64      | 752 17      | 486 92      |                        |
| 12. Total direct costs                                | \$24,551 19 | \$ 8,657 22 | \$13,880 77                        | \$ 1,785 35                                   | \$ 5,306 15 | \$ 4,351 96 | \$ 2,437 31 | \$ 2,013 20            |
| Indirect Costs:                                       |             |             |                                    |   |             |             |             |                        |
| 13. Routemen's indirect labor                         | \$12,177 26 | \$ 2,292 98 | \$ 7,980 98                        | \$ 2,032 76                                   | \$ 3,419 05 | \$ 1,854 78 | \$ 674 39   | \$ 1,903 30            |
| 14. Special delivery indirect labor                   | 271 69      | 137 94      | 94 74                              | 6 97  | 19 51       | 30 65       | 37 61       | 39 01                  |
| 15. Wholesale truck costs                             | 7,508 89    | 1,449 93    | 4,886 78                           | 1,237 43                                      | 2,084 52    | 1,139 27    | 425 56      | 1,172 18               |
| 16. Total indirect delivery costs                     | \$19,957 84 | \$ 3,880 85 | \$12,962 50                        | \$ 3,277 16                                   | \$ 5,523 08 | \$ 3,024 70 | \$ 1,137 56 | \$ 3,114 49            |
| 17. Total direct and indirect sales and delivery cost | \$44,509 03 | \$12,538 07 | \$26,843 27                        | \$ 5,062 51                                   | \$10,829 23 | \$ 7,376 66 | \$ 3,574 87 | \$ 5,127 69            |
| 18. Cost Per \$100.00 of Sales                        |             | \$6 42      | \$27 20                            | \$77 23                                       | \$32 77     | \$20 55     | \$15 43     |                        |

[fol. 1299] Explanation of Summary Schedule No. III

*Lines One Through Twelve*

Lines one through twelve are identical with those appearing on Summary Schedules Nos. I and II.

*Line Thirteen*

Line thirteen sets forth the total cost of indirect route labor, \$12,177.26. This amount is ascertained in the manner described in the explanation of line thirteen in Summary Schedule No. II, *ante*, pp. 62-63. This total amount has then been allocated between classes of customers in proportion to the number of stops. (APTO p. 126.)

*Line Fourteen*

Line fourteen sets forth the indirect labor costs of special deliveries, allocated on a "stop" basis, as appears in Schedule XXXI.

The rational basis for the use of the number of deliveries or stops as the divisor for this item of expense is that it is the number of requests for special deliveries which determines the need for special delivery trucks and drivers. Obviously, it takes approximately as much time and expense to deliver a special order to one store as to another, irrespective of the volume involved.

*Line Fifteen*

Line fifteen sets forth the wholesale truck costs, computed and allocated on a stop basis, as described in paragraphs 228 through 230 and Schedule XXXII. (APTO pp. 143-145.)

The following is the rational basis for the use of a stop basis in allocating this expense:

[fol. 1300] "In Mr. Malone's opinion, the costs involved in starting and stopping vehicles and in parking them are directly related to the number of stops, because these costs include wear and tear and gasoline

consumption, all of which are much greater in connection with such activities than in the continued running of the truck after it has started." (APTO p. 122.)

### *Line Sixteen*

Line sixteen sets forth the totals of the indirect delivery expense as allocated in lines thirteen, fourteen, and fifteen.

### *Line Seventeen*

Line seventeen gives the total of the direct and indirect costs of sale and delivery, computed by adding the amounts set forth in lines twelve and sixteen.

### *Line Eighteen*

Line eighteen sets forth the costs per \$100 of sales.

### How Summary Schedule No. III Proves that the Discounts Given by Borden Were Fully Cost Justified

The following table, constructed from the data set forth in Summary Schedule No. III, shows that, even when (1) no indirect costs are allocated on the basis of direct costs; (2) no overhead costs are considered at all; and (3) the various items of indirect delivery costs are allocated on the stop basis, the discounts granted by Borden are cost justified by a wide margin.

fol. 1301]

Table 3

|  | Differences<br>in costs per<br>\$100 of<br>sales | Amount<br>necessary<br>to justify<br>discount | Amount<br>of over-<br>justification |
|--|--|---|-------------------------------------|
| 1. Between chain stores and independents getting no discount (\$77.23 less \$6.42) . . . . | \$70 81  | \$8 50  | \$62 31                             |
| 2. Between chain stores and independents getting 2% discount (\$32.77 less \$6.42) . . . . | \$26 35  | \$6 50  | \$19 85                             |
| 3. Between chain stores and independents getting 3% discount (\$20.55 less \$6.42) . . . . | \$14 13  | \$5 50  | \$ 8 63                             |
| 4. Between chain stores and independents getting 4% discount (\$15.43 less \$6.42) . . . . | \$ 9 01  | \$4 50  | \$ 4 51                             |

Again, the margin of justification is so great that it obviates the need of quibbling over details of allocation.

**5. THE FACT THAT ALTERNATIVE METHODS OF ASSIGNING AND ALLOCATING COSTS CONCUR TO JUSTIFY THE GRANTING OF PRICE DIFFERENTIALS DEMONSTRATES THE REASONABLENESS AND SOUNDNESS OF THE COST JUSTIFICATION.**

Borden's cost study was so designed and presented as to supply data from which several different computations could be made employing differing methods of allocating the joint or indirect costs. This was done in order that the results of such different computations could be compared for the purpose of testing the reasonableness of the results attained.

The pre-trial orders do *not* set forth any of the final computations shown in the Summary Schedules presented in this brief and hence do *not* show what the results of the cost study were. What the pre-trial orders supply is the basic data and the facts necessary for the intelligent employment of such data.

Whenever joint or indirect costs are to be allocated, the possibility arises that one or more service units or measures [fol. 1302] are available as the basis for making the allocation. "In many cases more than one service unit might be chosen." (C.J.R. 28.) Here the proponent of a cost justification may make a choice; and, where the choice is reasonable, it suffices.

"A mere showing that a method other than that used by the respondent would produce narrower cost differences should not serve to overthrow an equally acceptable method used by respondent." (C.J.R. 11).

And again:

"Different service units will yield different dollar-and-cents results, and a particular service unit should not be chosen merely because it maximizes cost differences. Where the choice is otherwise a matter of indifference, however, there can be no objection to the choice of the method which produces the most desirable result." (C.J.R. 28.)

Professor Taggart's testimony on cross-examination emphasizes his agreement with these propositions. (T.D. 57, 227-229, App. 11-12.)

Where a choice is available, the fact that a particular price differential is justified, whichever choice is made, clearly demonstrates the existence of a sufficient differential in cost. As plaintiff's witness Sawyer admitted on cross-examination:

"If there are alternative methods of allocating a joint or indirect functional cost, exploration of alternative methods using different service units would strengthen the validity of the over-all judgment to be derived from any one of them." (S.D. 79, App. 29.)

A study of the three alternative summations made from the basic data furnished by Borden's cost study and of the fourth summation appearing later (*post*, p. 99) demonstrates that the store customer discounts were more than justified by differences in costs of sale and delivery.

\* \* \* \* \*

[fol. 1303] 1. THE CRITICISMS OF BORDEN'S COST STUDY WERE INCOMPETENT OR VALUELESS BECAUSE THEY WERE NOT BASED ON A REVIEW OF ALL THE PERTINENT FACTS, BECAUSE THEY WERE BASED ON ASSUMPTIONS OF FACT NOT SHOWN BY THE RECORD, AND BECAUSE THEY WERE BASED ON DOCUMENTARY AND OTHER MATERIAL WHICH WAS NOT DISCLOSED TO DEFENDANT'S COUNSEL FOR PURPOSES OF CROSS-EXAMINATION.

None of the four witnesses had any background acquaintance or practical knowledge of the dairy industry; none of them had done any advisory or consulting work for members of that industry. (T.D. 100, App. 20; S.D. 34, 173-174, App. 21-22; O.T.D. 45, App. 38; W.D. 3-5, App. 51.) None of them had read any of the literature dealing with distribution costs in that industry (T.D. 204-206, App. 2; S.D. 35-36, App. 21; O.T.D. 45, App. 38.)

Unfortunately, the three independent witnesses (Taggart, Sawyer, and Taylor) were not supplied with all the record facts; they were given erroneous impressions as to the facts; and they made assumptions of fact which were completely unfounded.

The three outside witnesses relied for their knowledge of the facts on Mr. Woolley. He supplied them at one time

or another with certain documentary matter, listed in Taggart Deposition Exhibit 2. (App. 64.) This list of documents is significant for its omission of a final draft of the Additional Pre-Trial Order as to Borden. (O.T.D. 50, 141, App. 40; S.D. 96, App. 25.) All that the witnesses [fol. 1304] were given with respect to Borden's cost study was a preliminary statement, Malone's subsequent deposition, and an abstract of that deposition prepared as a basis for discussing the inclusion of additional matter in that pre-trial order. The witnesses were not given any of the time study reports or the basic documents. Apparently, the witnesses were not even shown the Borden discount schedule. (O.T.D. 142-144, 173-176, App. 41-42.)

Repeatedly, the witnesses admitted that they were not informed as to important facts. Professor Taggart had not been aware of the functions of the solicitors in obtaining independent store business, although this was relevant to his expression of opinion as to the handling of extra compensation. (T.D. 80-85, 92-93, App. 17-18.) He had not read the provisions of the union contract relating to extra compensation, and had not taken them into account in formulating his views. (T.D. 86-91, App. 18.) Mr. Sawyer admitted that, not having read the final Additional Pre-Trial Order, he did not know whether "the explanation for the omission of central office overhead" was adequate. (S.D. 128, App. 34-35.) Mr. Taylor admitted that "he saw no testimony with regard to the method by which routes were determined" (O.T.D. 142-144, 173-176, App. 42), although facts were given in the Additional Pre-Trial Order. (APTO pp. 79-80, 122-123.) Mr. Taylor did not know whether the total costs of drivers were set forth in the Borden cost study or whether time allocations were also set forth (O.T.D. 56-57, App. 45), although Schedules XXV and XXVI make these facts clear. (APTO pp. 112, 129.)

Opinions not based on the relevant record facts are obviously of little value.

Furthermore, the three outside witnesses were supplied memoranda prepared by Mr. Woolley, including, particularly as to Borden, "Government's Memo: Cost defense [fol. 1305] analysis, September 25, 1956." (Taggart Dep. Ex. 2, App. 64.) This memorandum contained "material



descriptive of the operations of Bowman and Borden" (S.D. 15, App. 24; *cf.* O.T.D. 8-9 App. 39); and it contained about 55 pages. (W.D. 10, 31, App. 52.) The witnesses all relied on fact statements made in the memorandum in formulating their opinions. (T.D. 9-10, 106-109, 180-182, App. 4; S. D. 21, App. 24-25; O.T.D. 189-190, App. 38.)

Despite the fact that plaintiff's witnesses could not remember what was in Mr. Woolley's memorandum (*cf.* T.D. 108, 182-183, App. 3; O.T.D. 7, 78-79, App. 38-39; W.D. 35-36, App. 52), plaintiff refused on request to produce this memorandum in order to permit cross-examination of the witnesses as to the effect the supposed statements of fact made in this memorandum may have had on their opinions, or to permit verification of the accuracy of the assumptions of fact on which the opinions were based.

In addition, Mr. Woolley made oral statements of fact about Borden's operations which entered into the formation of the opinions expressed. (T.D. 118-119, 183-185, App. 4; O.T.D. 78-79, 58-59, App. 39, 47; W. D. 9-11, App. 52.) But the witnesses could not recall what Mr. Woolley told them (*cf.* T.D. 183-185, App. 3-4); and Mr. Woolley could not recall what he said. (W.D. 12, 15, 38-39, App. 53-54.) However, the record is replete with instances where the witnesses made assumptions of fact about Borden's operations and cost study which simply were untrue but were based in part at least upon these conversations.

For example, Professor Taggart's assumption, contrary to the record facts, that drivers might have something to do with determining the customers served by their routes, was based "partly on what Mr. Woolley told him." (T.D. 92, 96-97, App. 18.)

[fol. 1306] For another example, Mr. Taylor testified on cross-examination that "He was told that in the Borden cost study salaries and wages were not allocated between service functions and transportation functions," and that the total time spent by drivers "was not reduced to the money cost of getting the goods to the customers." (O.T.D. 53-56, App. 45.) Similarly, Mr. Taylor stated that "He was informed by Mr. Woolley that Borden did not allocate drivers' service costs on any basis" (O.T.D. 57-58, App. 46), despite the fact that Schedule XXVI (APTO p. 129) provides a complete breakdown of these service costs.

Since these false assumptions entered into the formulation of the direct testimony of these witnesses, but were completely contrary to the facts, the opinions of these witnesses must carry little or no weight.

Still another consideration reflects on the competence and weight of these opinions. Professor Taggart was candid enough to admit that "It was a little hard to keep Borden and Bowman completely straight in his mind." (T.D. 115-116, App. 4.) Mr. Woolley admitted that he based at least one of his opinions in his direct testimony on facts he had learned about *Bowman*, and that the assertion he made in his direct testimony as to Borden was "not based on any information presently in his possession so far as *Borden* is concerned." (W.D. 81-83, App. 63.)

The most glaring of the instances in which opinions as to *Borden's* cost study were predicated on evidence relating solely as to Bowman is Mr. Taylor's reliance on the Eggleston testimony as telling, among other things, "about the general operation of the distribution of Borden's products": Assertions ascribed to Eggleston (the ex-Bowman employee) were among "the facts which he took into consideration in the opinions which he expressed with respect to the *Borden* cost study." (O.T.D. 178-179, App. 39.) Professor Taggart also regarded the Eggleston testimony [fol. 1307] as evidence on which he could base opinions as to *Borden's* cost study. (T.D. 104-105, 117-118, App. 4.)

None of the three outside witnesses saw or asked to see the basic data developed by the Borden cost study, despite its availability (O.T.D. 7-8, App. 38-39; T.D. 235, App. 5; S.D. 7, 13, 15-16, 19, App. 23-24); and none of them asked for any information other than that edited by Mr. Woolley for their consideration. (T.D. 13, 235, App. 5) Time after time, these witnesses were forced to admit ignorance as to important facts appearing in the record (*e.g.*, T.D. 139, 86-91, App. 15, 18; S.D. 145, 97, App. 32, 35-36; O.T.D. 142-144, 173-176, 60-61, App. 42, 47-48), and on relevant subjects they several times admitted that they had not studied the data sufficiently to express an opinion. (*E.g.*, S.D. 98-99, 128, App. 33, 35; O.T.D. 52-53, 57, App. 45-46.)

Large segments of the direct testimony of the three outside witnesses proved, on cross-examination, to amount to nothing more than broad generalizations having no rele-

vance whatsoever to the Borden cost study. (*E.g.*, T.D. 70-72, App. 12-14; S.D. 73-74, 154-157, 80-82, 89, 90-99, 101, App. 25-33; O.T.D. 46-48, App. 40, 42.) In discussing the particular criticisms of the Borden cost study which these witnesses voiced in their direct testimony, it will be pointed out repeatedly that these opinions were based on assumptions of fact which are contrary to the record.

Opinions based on half knowledge, inaccurate facts, and unverified hearsay, are no basis for setting aside a cost justification based on such a complete, frank, and logical analysis as is provided by Borden's cost study.

. . . . .

[fol. 1308] *f. Plaintiff's Criticisms as to the Allocation of Extra Compensation and Transportation Expense Are at Best Mere Quibbles, Since Summary Schedule No. IV Shows That the Discounts Would be Fully Cost Justified Even If Plaintiff's Methods of Allocation Were Followed.*

Apparently, plaintiff's witnesses had not fully analyzed the cost study nor understood its purport, since their two major criticisms would, even if well taken, not affect the result.

The astounding fact is that, *even if* extra compensation be taken out of direct and indirect route labor costs and allocated on the basis of sales volume, and *even if* all "transportation expense" be allocated on the basis of sales volume the discounts are still fully justified by differences in the remaining costs.

[fol. 1309] Summary Schedule No. IV, appearing on the next page, sets forth an allocation of costs on plaintiff's own theory.

### Explanation of Summary Schedule No. IV

#### *Line One*

Line one sets forth the cost of direct route labor *excluding* drivers' extra compensation.

This figure was computed on the basis of the information summarized in Schedule XXV. (APTO p. 112.) The total

weekly direct labor costs there shown amount to \$29,242.50, which included \$10,148.31 of weekly extra compensation. Subtracting the latter amount left \$19,094.19.

Dividing \$19,094.19 by the number of minutes (376,864) produced a cost per minute of route activities, exclusive of extra compensation, of \$.05066316 per minute. This new cost per minute was then applied to the minutes of time spent in activities directly chargeable to different classes of customers as shown in Schedules XXVI, XXVII and XXIX (APTO pp. 129, 131, 135) to produce the figures set forth in line one.

### *Lines Two Through Eleven*

Lines two through eleven are identical with the same lines in Summary Schedules Nos. I, II and III.

### *Line Twelve*

Line twelve sets forth the totals of lines one through eleven.

[fol. 1310]

### *Line Thirteen*

Line thirteen allocates the \$10,148.31 of extra compensation shown on Schedule XXV (APTO p. 116) to the various classes of customers in proportion to the sales volume shown in Schedule XXXIV. This is equivalent to an allocation on the basis of either weight, bulk, or points, since the assortments of products delivered to the various classes of store customers did not vary store by store. (APTO pp. 72-73.)

### *Line Fourteen*

Line fourteen starts with the costs of routemen's indirect labor exclusive of extra compensation (\$7,951.27). These costs were computed by taking the minutes spent in indirect activities as shown on Schedules XXVI and XXIX and multiplying the total by the cost per minute (\$.05066316). The resulting total was then allocated to various classes of customers on the basis of the sales volume.

The allocations here made go farther than the most extreme position taken by plaintiff's witnesses, since they

include a number of items of indirect routemen's costs which do not by any stretch of the imagination constitute "transportation expense". Items 27, 29, 33, 34, and 35, totaling 22,569 minutes, represent sales accounting duties imposed on the route drivers which under none of the arguments advanced by plaintiff's witnesses should have been allocated on a volume of sales basis.

*Line Fifteen*

Line fifteen takes the \$271.69 of indirect special delivery costs shown in column (c) of Schedule XXXI (APTO p. 142) and allocates this expense on the basis of sales volume.

[fol. 1311]

**SUMMARY SCHEDULE No. IV**  
**Cost Justification Based on Allocating Both Extra Compensation and Transportation Expenses on the Basis of Volume**

|  | Grand<br>Total     | Chain<br>Stores     | Sub-total<br>Independent<br>Stores | Independent Stores by Discount Schedule Class |                    |                    |                    | Non-store<br>Customers |
|--|--------------------|---------------------|------------------------------------|---|--------------------|--------------------|--------------------|------------------------|
|  |                    |                     |                                    | 0%  | 2%                 | 3%                 | 4%                 |                        |
| <b>Direct Costs:</b>   |                    |                     |                                    |   |                    |                    |                    |                        |
| 1. Routemen's direct labor (excluding extra compensation)..... | \$11,142.92        | \$ 4,213.86         | \$ 6,050.88                        | \$ 746.51                                     | \$ 2,313.59        | \$ 1,914.57        | \$ 1,076.21        | \$ 878.18              |
| 2. Special delivery direct labor.....                          | 72.59              | 36.66               | 18.20                              | 1.29  | 3.28               | 4.53               | 9.10               | 17.73                  |
| 3. Branch office clerical.....                                 | 2,355.51           | 649.79              | 1,274.55                           | 325.66  | 546.14             | 295.64             | 107.11             | 431.17                 |
| 4. Billing department.....                                     | 466.15             | 356.38              | 42.29                              | 12.54   | 18.33              | 8.86               | 2.56               | 67.48                  |
| 5. Credit department.....                                      | 60.72              | 1.30                | 9.37                               | 2.78  | 4.06               | 1.96               | .57                | 50.05                  |
| 6. Accounting department.....                                  | 21.72              | 8.25                | 13.47                              | 3.99  | 5.84               | 2.82               | .82                |                        |
| 7. Robert F. White & Company.....                              | 140.83             |                     | 140.83                             | 41.76   | 61.04              | 29.51              | 8.52               |                        |
| 8. Tabulating department.....                                  | 57.20              | 12.12               | 45.08                              |   | 27.77              | 13.43              | 3.88               |                        |
| 9. Bad debt losses.....  | 31.58              |                     | 31.42                              | 9.32  | 13.62              | 6.58               | 1.90               | .16                    |
| 10. Loss on returned products.....                             | 2,213.82           | 1,139.20            | 972.87                             | 109.65  | 391.19             | 304.31             | 167.72             | 101.75                 |
| 11. Salesmen and solicitors.....                               | 2,065.83           |                     | 2,065.83                           | 135.10  | 691.64             | 752.17             | 486.92             |                        |
| 12. Total direct costs.....                                    | <u>\$18,628.87</u> | <u>\$ 6,417.56</u>  | <u>\$10,664.79</u>                 | <u>\$ 1,388.60</u>                            | <u>\$ 4,076.50</u> | <u>\$ 3,334.38</u> | <u>\$ 1,865.31</u> | <u>\$ 1,546.52</u>     |
| <b>Indirect Costs</b>  |                    |                     |                                    |   |                    |                    |                    |                        |
| 13. Routemen's extra compensation.....                         | \$10,148.31        | \$ 6,305.35         | \$ 3,247.26                        | \$ 212.40                                     | \$ 1,087.08        | \$ 1,182.40        | \$ 765.38          | \$ 595.70              |
| 14. Routemen's indirect labor.....                             | 7,951.27           | 4,940.28            | 2,544.25                           | 166.39  | 851.56             | 926.62             | 599.68             | 466.74                 |
| 15. Special delivery indirect labor.....                       | 271.69             | 168.80              | 86.94                              | 5.69  | 29.11              | 31.65              | 20.49              | 15.95                  |
| 16. Wholesale truck costs.....                                 | 7,508.80           | 4,665.27            | 2,402.85                           | 157.15  | 804.47             | 874.88             | 566.35             | 440.77                 |
| 17. Total indirect delivery cost.....                          | <u>\$25,880.16</u> | <u>\$ 16,079.70</u> | <u>\$ 8,281.30</u>                 | <u>\$ 541.63</u>                              | <u>\$ 2,772.22</u> | <u>\$ 3,015.55</u> | <u>\$ 1,951.90</u> | <u>\$ 1,519.16</u>     |
| 18. Total direct and indirect sales and delivery costs.....    | <u>\$44,509.03</u> | <u>\$ 22,497.26</u> | <u>\$18,946.09</u>                 | <u>\$ 1,930.23</u>                            | <u>\$ 6,848.72</u> | <u>\$ 6,349.93</u> | <u>\$ 3,817.21</u> | <u>\$ 3,065.68</u>     |
| 19. Sales Value.....   |                    | <u>\$195,262.07</u> | <u>\$98,672.52</u>                 | <u>\$ 6,554.77</u>                            | <u>\$33,051.13</u> | <u>\$35,899.27</u> | <u>\$23,167.35</u> |                        |
| 20. Cost Per \$100.00 of Sales.....                            |                    | <u>\$11.52</u>      | <u>\$19.20</u>                     | <u>\$29.45</u>                                | <u>\$20.72</u>     | <u>\$17.69</u>     | <u>\$16.48</u>     |                        |

[fol. 1312]

*Line Sixteen*

Line sixteen takes the \$7,508.89 of wholesale truck costs shown in Schedule XXXII (APTO p. 145) and allocates this amount on the basis of sales volume.

*Line Seventeen*

Line seventeen gives the total of the expenses allocated in lines thirteen, fourteen, fifteen, and sixteen.

*Line Eighteen*

Line eighteen sets forth the totals of sales and delivery expenses computed by adding the sales and delivery expenses charged directly (line twelve) to the transportation and extra compensation expenses allocated on a dollar sales basis (line seventeen).

This total represents the aggregate sales and delivery expense, exclusive of purely overhead expenses, allocated on the basis most favorable to plaintiff's arguments.

*Lines Nineteen and Twenty*

Line nineteen repeats the sales information appearing at line thirteen of Summary Schedule No. 1. Line twenty sets forth the costs per \$100 of sales computed by dividing the costs in line eighteen by the dollar sales given in line nineteen.

[fol. 1313] How Summary Schedule No. IV Shows that, Even if the Most Extreme Views of Plaintiff's Witness as to the Allocation of Extra Compensation and "Transportation Expense" Were Adopted, the Discounts Were Still Cost Justified by a Substantial Margin.

This fact is shown by Table 4, computed from data appearing in Summary Schedule No. IV.

. . . . .



Table 4

|   | Differences<br>in costs per<br>\$100 of<br>sales | Amount<br>necessary<br>to justify<br>discounts | Amount<br>of over-<br>justification |
|---|--|--|-------------------------------------|
| 1. Between chain stores and independents getting no discounts (\$29.45 less \$11.52)... | \$17.93  | \$8.50   | \$9.43                              |
| 2. Between chain stores and independents getting 2% discounts (\$20.72 less \$11.52)... | \$ 9.20  | \$6.50   | \$2.70                              |
| 3. Between chain stores and independents getting 3% discounts (\$17.69 less \$11.52)... | \$ 6.17  | \$5.50   | \$ .67                              |
| 4. Between chain stores and independents getting 4% discounts (\$16.48 less \$11.52)... | \$ 4.96  | \$4.50   | \$ .46                              |

Again, the wide margin by which the cost differentials exceed the discounts is proof that no amount of quibbling over details of allocations will disturb the basic results.

[fol. 1314] c. *In Any Event, If All of the Executive Time Allocable to Store Wholesale Business Had Been Charged Against the Chain Stores, Summary Schedule No. IV Shows That Even This Handling Would Not Affect the Result.*

As shown above, the weekly cost of all possible relevant executive time chargeable to store wholesale operations was \$358.69.

Summary Schedule No. IV shows that, even if the extra compensation and "transportation expenses" were all allocated on a volume basis, the discount schedule was fully cost justified.

The very most plaintiff could possible claim is that *all* the applicable executive time be charged to chain stores, and *none* to independents—a claim which is palpably absurd on its face. But even if it were allowed, the \$358.69 weekly [fol. 1315] charge would increase the costs of chain stores only \$0.19 over \$100 of sales.

Table 5 illustrates the effect of allocating to the chain store customers the entire cost of executive time applicable to store wholesale operations.

Table 5

|   | Differences<br>in costs per<br>\$100 of<br>sales <sup>1a</sup> | Amount<br>necessary<br>to justify<br>discounts | Amount<br>of over-<br>justification |
|---|--|--|-------------------------------------|
| 1. Between chain stores and independents getting no discounts ..... | \$17.74  | \$8.50   | \$9.24                              |
| 2. Between chain stores and independents getting 2% discount .....  | \$ 9.01  | \$6.50   | \$2.51                              |
| 3. Between chain stores and independents getting 3% discount .....  | \$ 5.98  | \$5.50   | \$ .48                              |
| 4. Between chain stores and independents getting 4% discount .....  | \$ 4.77  | \$4.50   | \$ .27                              |

As Table 5 shows, an allocation of *all* of the cost of executive time to chain store customers, together with the allocation of all extra compensation and transportation expense on a volume basis, still discloses a cost justification in excess of the difference in discounts granted as between the chain store customers and each of the classes of independent store customers. Again, plaintiff is here pursuing a completely irrelevant and insignificant subject.

[fol. 1316]      [File endorsement omitted]

**IN UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

**Civil Action No. 51 C 947**

**UNITED STATES OF AMERICA, Plaintiff,**

**vs.**

**THE BORDEN COMPANY, et al., Defendants**

**POST-TRIAL BRIEF FOR THE BOWMAN DAIRY COMPANY —  
Filed April 13, 1959**

•      •      •      •      •      •      •

[fol. 1317]

## Appendix

## EXCERPT

In a speech to the Milk Industry Foundation Convention at the Sheraton Plaza Hotel in Boston, Massachusetts on October 27, 1953, A. J. Bergfeld stated, in part:

“In the distribution of milk as in most other service functions, the cost of the service bears a direct relationship to the time required. Management spends money for trucks, gas, oil, tires and maintenance; base wages for routemen; operating costs for branch offices, including salaries, rent, and supplies; and for the other costs of maintaining a distribution system.

“This money is recovered when the routemen distributes his products and brings back sales revenue. The entire operation comes to a focus in this distribution function. What the money buys, actually, is a certain number of hours in which products are distributed and sales revenue returned.”

## EXCERPT A

*National Association of Cost Accountants Bulletin, Section 1—June 1951.*

The Burden Problem in Government Contract Costs By:  
Louis E. Zraik, Chief, Cost Accounting Section, Finance  
Division, New York Directed Operations, Atomic Energy  
Commission.

*“Direct Labor Dollar Burden Rates Most Frequent*

“The selection of a method of applying overhead may be determined by such factors as (1) the estimated cost of the contract, (2) the type of cost accounting system used by the contractor, (3) the nature of operations being carried on and how they differ from those normally conducted, and (4) the ease and convenience of obtaining overhead data from the books of the contractor.

“The most popular method of overhead rate determination relates expense to *direct labor*. Percentage of burden to direct labor dollars receives most frequent use. This

method of overhead apportionment is often availed of in connection with government cost-type procurement contracts when labor is the main productive element of cost. [fol. 1318] It is employed, for the most part, because of the ease with which it can be applied. Not many industrial companies accumulate the number of direct labor hours worked in each department. Payroll analysis along these lines is not always feasible. This method of applying overhead is seldom referred to in government contracts, even though it may be true that *overhead rates based on time (labor or machine hours) are generally preferred by cost accountants.*<sup>a</sup>

"The unit method of apportioning overhead, is seldom provided for in government contracts, for the reason that few procurement contracts are entered into with industrial companies which make only one product or a limited number of products of a uniform nature.

#### *"Manufacturing or Shop Burden*

"This category or burden may include various types of expenses. *Those generally found are indirect labor, shop salaries, operating supplies, expense tools, utility expense, depreciation, maintenance and repairs, normal plant rearrangement costs, employee insurance and payroll taxes, fixed charges of various types, and sundry manufacturing or shop costs.* The factors which determine what is included in shop overhead have been succinctly set forth in a National Association of Cost Accountants publication (*Accounting for Overhead Outline for Use in Program of Discussion Forums, 1947-1948*) which states that this determination depends on (a) the limits of the manufacturing processes, (b) the classification of direct and indirect costs, (c) accounting policy, and (d) the type of accounting.

"Most medium-sized and large organizations accumulate overhead costs by departments and/or cost centers. They likewise summarize direct labor costs on the same basis. Factory indirect costs are usually not accumulated

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<sup>a</sup> Throughout these excerpts, the emphasis has been supplied.

under shop orders and they cannot be directly identified with any specific unit (or units) of product which are being made. *Manufacturing or shop burden rates are usually determined by dividing the overhead costs for each department or cost center by the direct labor costs incurred in the department or cost center.*"

[fol. 1319] EXCERPT B.

*National Association of Cost Accountants Bulletin, Section 1—July 1954*

Cost Accounting For A Local Cartage Company By: W. J. Schroeder, Jr., Staff Member, Price, Waterhouse & Company.

(Note by defendant Bowman—The Purpose of this extract is to illustrate how the expenses of a cartage company are developed into a cost rate. By referring to Exhibit 11 of the extract, it will be noted that *all* of the company's operating expenses which are shown on Exhibit 1 are divided by driver time to determine a cost rate.)

[fol. 1320]

# EXHIBIT 1

## The Local Cartage Company, Inc. Profit and Loss Statement January 195x

|   |             |        |
|---|-------------|--------|
| Sales .....                                   | \$14,835 20 | 100 0% |
| Less: Variable Operating Expenses (Exhibit 3) |             |        |
| Direct Labor .....                            | \$7,565 96  |        |
| Direct Truck Expense .....                    | 841 61      |        |
| Total Variable Operating Expenses .....       | 8,407 57    | 56.7%  |
| Marginal Income .....                         | \$ 6,427 63 | 43.3%  |
| Less: Semi-Variable Expenses (Exhibit 3)      |             |        |
| Truck Expenses:                               |             |        |
| Storage—Repairs—Licenses .....                |             |        |
| Insurance .....                               | \$947 99    |        |
| Depreciation .....                            | 830 56      |        |
| Total Truck Expenses .....                    | \$1,778 55  |        |
| Operating Supervision .....                   | 1,254 52    |        |
| Vacation Allowances .....                     | 134 10      |        |
| Total Semi-Variable Expenses .....            | 3,167 17    | 21.3%  |
| Operating Margin .....                        | \$ 3,260 46 | 22.0%  |

## Less: Fixed Expenses (Exhibit 4)

|                                     |           |             |       |
|-------------------------------------|-----------|-------------|-------|
| Office Expenses.....                | \$ 734.93 |             |       |
| Selling Expenses.....               | 128.12    |             |       |
| Business Licenses and Taxes.....    | 92.50     |             |       |
| Administrative Expenses.....        | 1,133.14  |             |       |
| Miscellaneous Expenses.....         | 39.71*    |             |       |
| Total Fixed Expenses.....           |           | 2,128.40    | 14.3% |
| Net Profit Before Income Taxes..... |           | \$ 1,132.06 | 7.7%  |
| Less: Federal Income Taxes.....     |           | 283.02      | 2.0%  |
| Net Profit After Income Taxes.....  |           | \$ 849.04   | 5.7%  |

\* (Note by defendant Bowman—operating expenses in this column posted to Exhibit No. 11 of this excerpt.)

[fol. 1321]

## EXHIBIT 11

The Local Cartage Company, Inc.  
Analysis of Total Per-Hour Costs and Incomes  
January 195x

|                                 | Total<br>Costs** | Hourly<br>Actual<br>Hours | Hourly<br>Standard<br>Hours |
|---------------------------------|------------------|---------------------------|-----------------------------|
| Variable Operating Expenses:    |                  |                           |                             |
| Direct Labor.....               | \$ 7,565.96      | \$2.022                   | \$2.022*                    |
| Direct Truck Expenses.....      | 841.61           | .225                      | .225*                       |
| Total Variable Expenses.....    | \$ 8,407.57      | \$2.247                   | \$2.247*                    |
| Semi-Variable Expenses:         |                  |                           |                             |
| Truck Out-of-Pocket.....        | \$ 947.99        | \$ .253                   | \$ .250                     |
| Truck Depreciation.....         | 830.56           | .222                      | .219                        |
| Total Truck Expenses.....       | \$ 1,778.55      | \$ .475                   | \$ .469                     |
| Operating Supervision.....      | 1,254.52         | .336                      | .331                        |
| Vacation Allowance.....         | 134.10           | .036                      | .035                        |
| Total Semi-Variables.....       | \$ 3,167.17      | \$ .847                   | \$ .835                     |
| Fixed Costs.....                | \$ 2,128.40      | \$ .569                   | \$ .561                     |
| Total Costs:                    |                  |                           |                             |
| Before Taxes.....               | \$13,703.14      | \$3.663                   | \$3.643*                    |
| Estimated Income Taxes.....     | 283.02           | .076                      | .075                        |
| Total Costs.....                | \$13,986.16      | \$3.739                   | \$3.718*                    |
| Net Profit for the Month.....   | 849.04           | .227                      | .224                        |
| Sales.....                      | \$14,835.20      | \$3.966                   | \$3.942*                    |
| Hours Used in Calculations..... |                  | 3741                      | 3795                        |

\* Includes variable expenses based upon actual hours.

\*\* (Note by defendant Bowman—operating expenses posted directly from carting company's Profit and Loss Statement.)



[fol. 1322] EXCERPT C

*National Association of Cost Accountants Bulletin, Section 1—August 1, 1926.*

Distribution of Burden By: Grant L. Bell, Auditor,  
Consulting Accountant, Scranton, Pa.

*“Method of Overhead on Burden Application*

*“Productive Labor Cost Method.* The Productive Labor Cost Method is based upon the principle that indirect expenses are incurred in proportion to the cost of labor involved.

“To arrive at the proper percentage to be used, it is necessary only to divide the total amount of overhead expense for the period by the total cost of the direct labor for the period, the result showing the proportion of overhead expenses to the total productive labor in terms of percentage. The amount to be applied is then found by multiplying the direct labor cost by the percentage, the result to be added to the material and labor costs to obtain the total factory cost.

“This method is simple and very widely used, and will often prove satisfactory under the following conditions:

“a. The labor should be the dominant element in the manufacturing process.

“b. There should be a marked uniformity as to product, wages paid and time of operation in the article manufactured.

“These conditions rarely exist throughout an entire factory, but if each department overhead is distributed separately, the method will prove to be quite accurate.

*“Productive Labor Hours Method.* The principle of the Productive Labor Hours Method differs from the Productive Labor Cost Method only in that the amount of labor is measured by time and not by cost. That is to say, the overhead expenses of a plant are considered to be in proportion to the number of employees engaged and the hours they work rather than to the wages paid.

[fol. 1323] “Owing to the difference in rates of wages paid to employees, the Labor Hours Method is applicable to a wider field than the Productive Labor Cost Method.

"The rate to be used for applying the overhead to the product is determined as follows:

"Total amount of factory overhead expenses divided by total number of productive labor hours equals the rate per hour to be applied to the number of hours of work upon the product."

#### EXCERPT D

*National Association of Cost Accountants Bulletin, Section 1—February 1, 1949.*

Spreading Overhead to Cost Centers on the Basis of Standard Earned Hour Rates by Clarence A. DeLand, Cost Accountant, Rollaway Bearings Co., Syracuse, New York.

"Manufacturing overhead can be distributed or applied to direct labor dollars, direct labor hours, or machine hours through use of one of the three following types of rates:

- "1. An overall percentage applied to the total direct labor unit.
- "2. A general departmental rate, viz., turning department, drilling department, grinding department, applied to the direct labor unit for the respective department.
- "3. A cost center or operation classification, viz., drilling-milling machine group, drilling-drill press group, grinding-centerless grinding, grinding-internal grinder, etc.

"The labor unit selected (dollars or hours) for use as the base for spreading manufacturing overhead can, of course, be the result of current determinations of actual period compilations of the components of this base, or the result of a survey of past operations coupled with conservative estimates of future operations. Or a 'standard' [fol. 1324] unit, deemed to be representative of the base can be established as the factor for accumulating overhead. The labor unit selected here for application of manufacturing overhead is 'standard earned hours'. The decision to apply overhead at so much per standard earned hour to

cost centers rather than on a plant wide or departmental scale reflected an intensive survey of the various practical methods for accumulating overhead costs as they related to specific products and processes. The 'cost center' method disclosed itself as much the most equitable solution to our particular problem."

#### EXCERPT E

*National Association of Cost Accountants Bulletin, Section 3—September 1955, 1955 Conference Proceedings—3*

#### *Processing Industries*

Discussion Leader: Raymond E. Burren, Controller, Overseas Division, Monsanto Chemical Co., St. Louis, Mo.

#### *Overhead Allocation*

"Returning to the subject of overhead allocation, the group indicated through a show of hands that a majority of companies represented are using direct labor dollars as the vehicle for such allocation. Direct labor hours ranked next and machine hours last. Some mention was made of the practice of having several bases for allocating burden. One individual stated that his company uses material, machine rate and direct labor as bases. The group, again through a show of hands, indicated that more companies used departmental rates of overhead allocation than an overall plant burden rate.

"The closing comments pointed out that the nature of the product dictates the system used for costing it in the individual companies."

#### EXCERPT F

*Cost Accountants' Handbook*—Edited by Theodore Lang, MFA, SPA, Professor of Accounting, New York University.

Published by The Ronald Press Company—1945

Section 3—Cost Classifications—Page 170

[fol. 1325] "*Departmental Burden Rates*. Total producing department charges (consisting of direct and redistrib-

uted expenses) are reduced to burden rates. Section 26.9(j), T.D. 5000, mentions application on basis of direct labor cost. However, the special government bulletin specifically advocates use of departmental rates based on the usual factors:

- "1. Per cent of direct labor dollars.
- "2. Dollars per man hour.
- "3. Dollars per machine hour.
- "4. Dollars or cents per unit (weight, quantity, length, area, cubic contents, etc.)

"In a small plant or within a department of a larger plant where labor constitutes an important part of cost and where the investment per man and the rates of pay are substantially uniform, a percentage of direct labor cost is a simple and satisfactory method of expense distribution. On the other hand, where labor is a relatively minor part of cost and depreciation, repairs, supplies, and maintenance of machinery are relatively large, the expenses are more equitably applied on the basis of machine hours. When direct labor appears to be a logical base but rates of pay are not substantially uniform, the expenses may be absorbed more equitably by means of rates per man hour. Again, in other cases in which these methods are not logical or practicable, but a common unit of measurement exists representing volume or production for a particular process, the expenses may be absorbed by means of a rate per unit."

#### EXCERPT G

*Proceedings of the Eighteenth International Cost Conference Held at The Homestead, Hot Springs, Va., on June 21, 22, 23, 24, 1937, and recorded in The National Association of Cost Accountants Year Book 1937.*

**Subject:** *Distribution Costs in the Ice Cream Industry* by O'Neil Johnson, In Charge, Statistical and Accounting Bureau, International Association of Ice Cream Manufacturers, Washington, D. C.

"The International Association of Ice Cream Manufacturers has maintained an Accounting Bureau for eleven years. About four years ago, the Statistical Bureau was

merged with the Accounting Bureau. A great many of the [fol. 1326] accounting practices of the industry are a result of the research work of this Bureau, working with the Controllers' Council and the Statistical Committee of the Association. All of the charts I am using in connection with this talk and most of the other data were obtained from the Statistical and Accounting Bureau of the International Association of Ice Cream Manufacturers.

"According to the United States Census Bureau, only 10.7 per cent of the ice cream business is done in manufacturer-owned stores. In this discussion of distribution costs in the ice cream industry, therefore, only the wholesale ice cream business will be discussed.

### *"Three Bases for Analyzing Distribution Costs"*

"Selling and distributing costs can be used or examined from three different viewpoints.

"1. Cost which have to do with the various functions of the distribution organization, and which are watched particularly from the standpoint of trying to keep them in line, or as low as possible consistent with good service. These are such costs as delivery costs, shipping platform costs, costs of furnishing and servicing cabinets, and the check and control of advertising, particularly point of sale advertising, which is usually a service that most dealers very much desire.

"2. The obtaining of distribution costs by products, that is, the cost per gallon of selling and delivering bulk ice cream, package ice cream, ice cream cups, and specialties and novelties, etc. you just saw that there has been a very material change in the quantities of the different products which are sold. For that reason, it does pay to watch carefully the distribution costs for each product.

"3. Distribution costs by classes of customers, that is, costs by the groups into which customers naturally fall. These groups are usually determined by location, type of outlet, and amount and kind of products sold. Under locations we have city routes, suburban routes, and country routes, each with its different problems, and different kinds of customers.

(Note by defendant Bowman—This article stated that the procedures for charging these *Distribution Costs* were as follows:)

[fol. 1327] *Trucking Costs on a Time Basis* (Stopping and Running Minutes)

Chauffeurs Wages and Commissions

Tires

Gasoline and Oil

Misc. Supplies & Licenses

Insurance—Truck, Compensation on Driver

Repairs to trucks, garage, equipment, etc.

Proportion of Transportation Department

Depreciation of Trucks and Garages

Outside Cartage

*Miscellaneous on a Gallon Basis*

Shipping Floor Labor & Depreciation

Delivery Supervision

Depreciation and Repair, Cans

*Miscellaneous on a Dealer Basis*

Cabinet Expense

Cabinet Installation

Phone Calls on Orders

Order Clerk Salaries

#### EXCERPT H

*Cost Accountants' Handbook*—Edited by Theodore Lang, MBA, CPA, Profesof of Accounting, New York University.

Published by The Ronald Press Company—1945.

*Section 19—Overhead & Product Cost—Page 1018. Research Study by National Association of Cost Accountants (See National Association of Cost Accountants Bulletin, Vol. 19).*

*Summary of Extent of Use of Methods of Applying Overhead to Product.*

[fol. 1328]

| Method Used                       | Number of Companies               |                               | Total |
|-----------------------------------|-----------------------------------|-------------------------------|-------|
|                                   | Using as<br>Major or<br>Only Base | Using as<br>Secondary<br>Base |       |
| Actual direct labor cost .....    | 96*                               | 13                            | 109   |
| Actual direct labor hours .....   | 27*                               | 21                            | 48    |
| Actual machine hours .....        | 30*                               | 13                            | 43    |
| Weight basis .....                | 7                                 | 29                            | 36    |
| Standard machine hours .....      | 13*                               | 22                            | 35    |
| Standard direct labor hours ..... | 29*                               | 4                             | 33    |
| Unit of product .....             | 11                                | 18                            | 29    |
| Material cost .....               | —                                 | 11                            | 11    |
| Prime Cost .....                  | 5                                 | 5                             | 10    |
| Standard direct labor cost .....  | 5                                 | —                             | 5     |
| Miscellaneous .....               | 1                                 | 2                             | 3     |
| Total .....                       | 224                               | —                             | 362   |

\* (Note by defendant Bowman: The 195 companies indicated used time or labor cost (directly related to labor time) as a base for distributing costs to products. These 195 companies represented 87% of the total.)

## [fol. 1329] EXCERPT I

*Cost Accounting* (3rd edition, 1948), by Reitell, National Vice President of National Association of Cost Accountants (1946-1947) and Harris, Professor of Accounting, New York University; Member, Board of Directors, National Association of Cost Accountants, International Textbook Company

Reitell says on pages 347-359 (with reference to Overhead):

"The fundamental theory underlying the selection of any basis for burden application is that a casual, functional or proportional relationship exists between the standard burden budgeted for the normal activity of a cost center and the basis or *common denominator selected for expressing the normal activity of the center*. Many overhead (burden) items are a function of time; that is, they increase with the passing of time. Hence a time basis, such as direct labor hours or machine hours, theoretically—and often practically—is superior to an output basis of direct labor cost basis."



## EXCERPT J

*National Association of Cost Accountants Research Report. Analysis of Non-Manufacturing Cost for Managerial Decisions.*

National Association of Cost Accountants, Research Series 19, 20, 21.

*Indirect Costs*

"After charging directly those costs which can, as a practical matter, be treated as direct charges, there remain indirect costs to be allocated. These indirect costs are collected as totals and subsequently are spread over the various units to be costed. Allocation as a costing process thus proceeds by breaking down totals to arrive at separate unit costs in contrast with direct charging which classifies the costs at their source.

"In order to allocate indirect costs it is necessary to select a basis of allocation which serves as a common denominator for the units to be costed. The cost is then divided among the various units in proportions based upon this common denominator. For example, cubic content of goods handled is often used as the basis of allocating warehousing costs to products.

[fol. 1330] "The process of allocating assumes that the cost being allocated is correlated with the basis used for allocation. Where basis and cost are unrelated and do not vary together, the resulting unit costs are determined arbitrarily. To illustrate, where warehouse space is rented and paid for according to the amount of space occupied, there is a definite relationship between the number of cubic feet in goods warehoused and cost of warehousing. On the other hand, there is no such relationship between sales value of the goods and warehousing cost unless sales value is directly proportional to bulk of the goods warehoused."

## EXCERPT K

*National Association of Cost Accountants Bulletin, Section 1—April 1957.*

Subject: *A Job Order Cost System for a Heavy Machinery Co.*

By: Nelson J. Kemp, Vice President, Continental Gin Co., Birmingham, Alabama.

*"Basis of Factory Overhead Rates.* The manufacturing departments of our company are classified as productive departments, semi-productive departments, and general manufacturing departments. *Factory overhead cost rates are based on actual direct labor hours* recorded and accumulated from individual job tickets. Some time ago we made a study of cost difference between costing a representative number of our products through use of individual machine tool overhead rates and average overhead rates for each productive department. It was found that the difference was negligible and use of average department overhead rates has since been adopted."

[fol. 1] IN THE UNITED STATES DISTRICT COURT, NORTHERN  
DISTRICT OF ILLINOIS, EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE BORDEN COMPANY, ET AL., Defendant

**Deposition of Herbert F. Taggart**—Filed February 13, 1959

The deposition of Herbert F. Taggart, called by the plaintiff for examination, pursuant to agreement of counsel for the respective parties, and pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions for the purpose of discovery, taken before Paul A. Ruhe, a notary public within and for the County of Cook and State of Illinois, in Room 756, United States Courthouse, 219 South Clark Street, Chicago, Illinois, on Monday, April 14, 1958, at 1:30 o'clock, p.m.

PRESENT:

Mr. Earl Jinkinson, and Mr. Bertram Long, on behalf of the Government;

[fol. 2] Mr. Stuart S. Ball, Mr. H. Blair White, and Mr. Joseph Greaves, on behalf of defendants The Borden Company and Belmont Dairy Company.

Mr. Edward L. Hart, Jr., and Mr. John P. Stevens, on behalf of the defendants Bowman Dairy Company and Ridgeview Farms Dairy, Inc.

[fol. 3] Mr. Long: This is a discovery deposition and the direct examination is found in the proposed rebuttal submitted by the Government, beginning on Page 4 and continuing to Page 9.

Mr. Stevens: That is not true with respect to Bowman.

Mr. Long: Pages 5 to 8 is the direct examination of this witness and he is now turned over for cross examination.

Mr. Jinkinson: Discovery, let us say.

Mr. Long: Discovery, proceed to discovery.

HERBERT F. TAGGART, having been first duly sworn, deposeth and saith as follows:

Cross-examination

By Mr. Ball:

Q. Professor Taggart, do you have in front of you the draft of the plaintiff's rebuttal pre-trial orders to the Borden Company?

A. Not at the moment.

Mr. Ball: Would it be possible to have the witness have a rough draft?

Mr. Jinkinson: The record may show the witness now has one.

By Mr. Ball:

Q. Now, I call to your attention Page 5 of that report, [fol. 4] Professor Taggart. You referred to yourself as having been chairman of the advisory committee on cost justification under the Robinson-Patman Act, Federal Trade Commission, from 1953 to 1956.

It is a fact, is it not, that your committee made a report of its deliberations in the year 1956?

A. That is correct.

Mr. Ball: I am going to substitute a clean copy. Will you mark this Taggart Deposition Exhibit No. 1?

(Said document was marked as requested.)

By Mr. Ball:

Q. Professor Taggart, I hand you what the reporter has marked as the Taggart Deposition Exhibit No. 1 for identification. This is a publication of the Commerce Clearing House Trade and Regulation Reports and ask you if you are familiar with this as a reprint of the report made by your committee?

A. I have seen it, yes. I have never compared it in detail with the original report.

Q. But as far as you know this is a verbatim copy of the original report?

A. As far as I know, yes.

[fol. 5] Mr. Ball: Mr. Jinkinson, may it be agreed that we could later on substitute the official copy of the——

Mr. Jinkinson: If there is any argument we will have a chance to compare it and finding it the same thing, we have no objection to it.

By Mr. Ball:

Q. Now, turning now to Page 6 of the Government's report——

Mr. Jinkinson: 6?

Mr. Ball: The draft.

By Mr. Ball:

Q. I call to your attention your statement that you have written sections on distribution costs in the second and third edition of the Accountant's Hand Book. That appears in the fifth, sixth lines; no, fourth and fifth lines. That is correct?

A. That is correct.

Q. Now, I hand you here what I understand to be a third edition of the Accountant's Hand Book, and I call attention especially to Pages 299, or, rather, 297 through 338 and I ask you if that is the section on distribution costs for which [fol. 6] you were primarily responsible in the Accountant's Hand Book?

A. That is right.

Q. Is there a later edition of the Accountant's Hand Book with this section in it or is this the last edition? This was published in '49.

A. There is a fourth edition for which I did no writing.

Q. Yes, it is my understanding that you did the first draft and was generally responsible for this particular section 6 on distribution costs?

A. That is correct.

Mr. Jinkinson: That is in the third edition.

Mr. Ball: Yes. Mr. Reporter, the book referred to is the Accountant's Hand Book, third edition, edited by W. A. Paton, professor of accounting at the University of Michigan.

The book was published in 1949 in New York by the Ronald Press Company.

By Mr. Ball:

Q. My understanding of the subsequent edition, Professor Paton was no longer editor-in-chief?

A. That is right.

Mr. Jinkinson: It is my understanding that this witness [fol. 7] has nothing to do with the subsequent edition,

The Witness: That is right.

By Mr. Ball:

Q. You were also an author of an article entitled "Cost Justification under the Robinson-Patman Act" in the Journal of Accountancy, Volume 101, June, 1946, Page 152?

A. I wrote an article about that time and I am willing to accept your citation.

Q. Now the next one I am sure you will remember, an article entitled "Sacred Cows in Accounting," in the Accounting Review, Volume 28, July, 1953, at Page 313.

A. This, too, is probably correct.

Q. The sacred cows had nothing to do with the dairy industry?

A. Nothing whatever.

Q. Then you wrote an article entitled "The Standard Brands Case," which appeared in Volume 21 of the N. A. C. A. Bulletin. I suppose that is the National Association of Cost Accountants?

A. That is correct.

Q. At Page 195 which is the issue No. 4, dated October 15, 1939?

[fol. 8] A. I remember the date. That is the right date.

Q. And then you also wrote an article entitled, "Work of the Cost Justification Committee," which appeared in the Anti-Trust Bulletin for January, 1956?

A. I wrote such an article. I presume again this is a correct citation.

Q. Also subject to verification, if I am not correct.

Mr. Jinkinson: Yes.

By Mr. Ball:

Q. Now, turn to Page 6 again of the draft of the Government's pre-trial order and I call your attention particularly to paragraph 10.

Were you ever shown the final draft of the pre-trial order with respect to the defendant Borden?

(No response)

Q. I call your particular attention to the fact that it states that you were shown the preliminary draft of defendant Borden's pre-trial order?

A. Frankly, I don't recall that I have ever seen the final draft. I hate to say that I didn't, but I don't recall seeing any such thing.

Q. Do you have any recollection of the date on which you were shown the materials described in Paragraph 10?

A. Oh, yes.

[fol. 9] Q. The first sentence?

A. This was last June.

Q. June, 1957?

A. June, 1957, that is right.

Q. And do you recall just what it was that you did receive for study at that time?

A. I received a great many documents of one kind or another, some memoranda that had been prepared by Mr. Woolley, I believe, and I remember seeing this preliminary draft and the deposition of Mr. Malone. I don't recall. I can't—I was given a list of the things that had been shown me and I still have that list but I can't recall of my own independent recollection exactly what all I saw. There were too many documents entirely.

Q. Now, were these documents given to you by mail or in the course of a conversation or visit by Mr. Woolley or someone else of the department?

A. If I recall, Mr. Woolley brought them along with him. I don't believe they were mailed to me, as far as I recall.

Q. Your first information then came in the course of a visit from Mr. Woolley?

A. That is correct.

[fol. 10] Q. That you think took place about June, 1957?

A. That is right.

Q. And that took place in your office in Ann Arbor?

A. Yes.

Q. Did you have subsequent visits with Mr. Woolley?

A. Well, Mr. Woolley visited Ann Arbor twice, as I



recall. The first time just a general preliminary visit bringing along these documents. The second time for the purpose of discussing some aspect of the case in some detail.

Q. Now, about how much time, Professor Taggart, did you spend on the preparation of the material that appears in this pre-trial draft or pre-trial order?

A. Well, I spent the better part of two pretty solid weeks in reviewing the materials that had been brought to me before Mr. Woolley's second visit.

Q. Yes. May I inquire whether that two weeks was spent just with respect to Borden or was it with respect to both the Borden and Bowman materials?

A. The both cases, both Bowman and Borden materials, that is correct. And then later when Mr. Woolley made his second visit, which I forget how long it was, he and I spent two or three or four days pretty intensively on the material.

[fol. 11] Q. Now, looking at Paragraph 10 which covers the most of Page 6, Page 7, Page 8 and most of Page 9, is that text a text which you wrote or is that a summarization prepared of your testimony?

A. Well, certainly parts of it I wrote personally and parts of it is very possibly summarization; but in any event it is material that I agreed to as expressing my sentiments.

Q. Did you as a result of the two weeks' study of the two documents prepare any written report of those documents at that time?

A. I made notes for my own benefit, rather substantial notes, and I remember preparing a three or four page commentary on the references which were included in one of the studies. Which study it was, I can't tell you.

Q. That may have been the Bowman study, as far as your present recollection is concerned?

A. I would think very probably it was the Bowman study.

Q. Did you send that memoranda to Mr. Woolley by mail?

A. That memorandum I did, yes.

Q. Did you write any letters to Mr. Woolley, commenting on these reports, on the material?

[fol. 12] A. I don't think so. I may have made some incidental comment and certainly did not write any extensive letter of any kind that could be called a report on the materials.

Q. Then your present recollection is that the only document other than that embodied in these two drafts of the pre-trial order that you prepared was this comment on the sources referred to in one of the two pre-trial orders, is that correct?

A. This is the only thing that I prepared in the form of what might be called a formal memorandum.

Q. Did at any time you suggest to Mr. Woolley any questions that Mr. Woolley might wish to ask of Mr. Malone?

Mr. Jinkinson: Just a minute. I am going to object to that question on the grounds of immateriality. I direct the witness not to answer the question. It hasn't anything to do with what studies he had made in this matter. It is improper.

By Mr. Ball:

Q. Passing that up, in view of the instruction, for the moment, may I ask you this—

Mr. Hart: Maybe the witness does not want to follow [fol. 13] the instruction. I think we should find out.

By Mr. Ball:

Q. Yes. Do you wish to answer in view of the instruction?

A. You realize that I am in a somewhat difficult position.

Q. I do not want to place you in a position of embarrassment, Professor Taggart. We can always seek a ruling of the Court if we regard it as important or material. I understand that that can be done on comparatively short notice. But I think it is only proper we should ask you whether you wish to answer or not, in view of the instruction.

A. I think under the circumstances I should prefer to refrain from answering.

Q. Did you ask Mr. Woolley at any time to secure for you any further information concerning the Borden operations or the Bowman operations that might throw some light upon any facet of the cost studies?

A. I don't think so.

Q. I would like to ask you to look at the second sentence in this paragraph, because I do not understand it. [fol. 14] You make your comments beginning with (A) with reference to the principles underlying a properly conceived system of distribution, cost accounting and allocation.

Now, what do you mean by a system of distribution, cost accounting? Would that not have reference, Professor Taggart, to an organization of bookkeeping method to provide a continuous accounting?

A. The word "system" is sometimes used in that sense. It certainly does not mean that here.

Q. Just what did you mean by the word here?

A. Why, I think if we substituted the word "plan" for example, it would come perhaps closer to what I meant.

Q. Well, what we have here in the case of Borden was a study made of or a special study and analysis made of factors entering into costs.

Now, that would hardly be either a system or plan, would it?

A. Oh, I don't see why not, that is, a study of that sort could not be made without first having a plan, a scheme in mind of procedure.

Q. I am trying to get at what you meant here.

You do not mean that there is anything less than satisfactory in a study as opposed to a continuous course of accounting records?

A. Far from it.

Q. In other words, it is true, is it not, that it is generally necessary in analyzing such problems as the Robinson-Patman Act presents that special studies should be made?

A. Invariably.

Q. And that they be made after the fact rather than in advance of the setting up of a price schedule?

A. Well, they can be made both times.

Q. Yes, but it is perfectly proper to make them after as well in advance?

A. Well, here, this is a legal problem, I think.

Q. Yes.

I mean from the standpoint only of an accounting judgment to be rendered, one would add as much validity to the accountant as the other.

Mr. Jinkinson: I object to that and ask for a ruling, legal ruling, and ask the Court to decide.

By Mr. Ball:

Q. I am asking him, would it have more weight as an accounting matter.

[fol. 16] Mr. Jinkinson: I do not tell him not to answer the question. I want my objection to show on the record.

By the Witness:

A. I have no objection personally to the question. No. I have participated in both kinds of studies, as a matter of fact, on numerous occasions. They both have validity. They are conducted along somewhat the same lines except that a study prior to adopting a price schedule ordinarily attempts in some degree to forecast what cost relationships are expected to be over some period in the future, based, of course, largely on what has happened in the past, whereas an ex post facto study relies, of course, exclusively on data accumulated in the specific past period.

Q. That represents what has actually happened?

A. As nearly as can be ascertained.

Q. That leads us right into the fact that any analyses has to have by its very nature a margin of error?

A. No question about that at all. Might we break off proceeding so I may get myself a drink?

Mr. Ball: Yes, sir.

(A short recess taken.)

[fol. 17] By Mr. Ball:

Q. Now, calling your attention particularly to the cost justification report, that was the product of your commit-

tee of which you were chairman. The general principles of cost analysis are outlined in that report, are they not?

A. I think so, yes.

Q. You are in accord with the pronouncements of that report of your committee, are you not?

A. I should say so, yes.

Q. Are there any major differences of opinion between you and the report or in general does it represent your point of view?

A. In general, it certainly represents my point of view.

Q. And I take it to be equally true that what you said in the section on distribution costs in the Accountant's Hand Book also represents your considered point of view?

A. Representing my point of view at that time at least.

Q. Do you recall of any major changes of opinion that you have had since that section was written in '49?

A. I probably had not looked at it for ten years.

Q. Now, I call your attention particularly to the cost [fol. 18] justification report which is Taggart Deposition Exhibit No. 1 for identification, and I would like to call attention then to certain statements made on Page 6. I call your attention to the first full paragraph and the sentence reading "This section discusses—referring to Section 3 on Page 6, the first full paragraph.

Mr. Jinkinson: The second sentence?

Mr. Ball: This section, referring to Section 3, "discusses basic concepts essential to an understanding of the nature and limitation of cost accounting and the necessity for a broad approach in the administration of the cost proviso."

Now, I take it that you are in agreement with the concept expressed that there are limitations in cost accounting very definitely?

By the Witness:

A. That is right.

By Mr. Ball:

Q. And you are also in accord with the belief that there must be a broad approach in the application of the cost proviso if it is to obtain economic, to approach the economic [fol. 19] justification of the intendment?

A. That is what the committee holds.

Q. That is your personal view, as well?

A. That is correct.

Q. Now, I turn your attention to Page 9 of the report under the heading "C," the second paragraph, and I am going to read it and ask you if it does not express your opinion as well as that of the committee?

"In view of the plus or minus leeway which must be granted to all cost figures as discussed later (Section 3-A-1), due allowance should not be construed in every case to require full and complete cost justification of a price differential. It should be construed flexibly so as to require only reasonable allowance for cost differences based on sound accounting and pricing principles."

Now, I take it that you are in agreement with that statement up to that point?

A. That is right.

Q. It goes on:

"For this reason the committee approves the position taken by the Commission in applying a de minimis [fol. 20] concept to cases where price differentials are not shown to be completely cost justified but where circumstances minimize such failure to the extent that no corrective action is deemed necessary."

You are in agreement with that statement of principle?

A. I am, yes.

Q. The next sentence:

"In considering the applicability of the de minimis concept a primary test to be applied is the relation of the unjustified portion to the differential itself, not to the higher unit price."

I take it you agree to that principle as well? If not, I would welcome your statement of your difference.

A. Well, my own feeling on that is that a comparison should be made in both ways. As a matter of fact, that is, I think this was a slight misstatement of my own feel-

ing, that is, that the unjustified price which should be compared both with the amount of the—how does it put it?

[fol. 21] Q. To the difference itself, rather than to the price?

A. To the difference itself and also to the higher unit price. On the other hand, I think both things are essential.

Q. Now, dropping down on Page 9 to Section D, the third paragraph, I will read as follows:

“There are many differing methods or quantities which may give rise to cost differences between customers or classes of customers. Such differing methods or quantities are generally ascertainable upon an analysis of the seller’s manufacturing and distribution system. Such analysis should interpret these terms in their broadest connotation, giving full effect to all items of cost difference. The term resulting from also should be given the same broad interpretation.”

That still represents your point of view, I take it?

A. It certainly does.

Q. Now, turning to Page 10 under Section 3 the first numbered paragraph, I am going to read that:

[fol. 22] “The nature of cost accounting.

“Cost accounting is not and can never become an exact science because of the inherent element of judgment. Despite the prescription of uniform and detailed cost accounting procedures, two equally competent cost accountants may obtain different results from the same data.”

I am going to stop at that point. Those two sentences represent a point of view that I am sure that you are in accordance with?

A. That is correct.

Q. (Reading):

“For this reason all cost accounting, cost analysis results should be accepted as reasonable approaches to accuracy and not as precise measurements.”



And again I take it that that is your considered opinion?

A. That is correct.

Q. And it is with that in mind that the reference was made that I referred to earlier, to the limitations of cost accounting that lie on that fact as in others?

[fol. 23] A. Yes, I think all this says is that cost accounting is an approach to accuracy. It can't be termed precisely accurate because of the inherent limitations.

Q. Let me go on:

"The fact that unit costs are frequently stated in mathematical terms after elaborate and painstaking calculations gives them an aura of precision that is not warranted. With few exceptions every unit cost and every cost difference is subject to some plus or minus allowance. This fact is universally recognized for managerial purposes and should be for purposes of the Robinson-Patman Act. Most of the difficulties of proof stem from the fact that cost differences at best include elements of opinion and approximation."

Now, now again to that point it states your considered opinion?

A. That is correct.

Q. Now, turn to Page 2. Good Faith Cost Studies. I would like to read from that as follows:

"Great weight should be given to cost studies made in good faith and in accordance with acceptable accounting doctrine. Great weight should be interpreted as meaning that accounting principles relied on by a respondent should have an evidentiary value superior to an adverse theory of accounting unless the adverse theory is supported by a preponderance of evidence that the principles relied on by the respondent are not sound. A mere showing that a method other than that used by the respondent would produce narrower cost differences should not serve to overthrow an equally acceptable method used by the respondent."

Again, I ask you if that does not state your considered opinion?

A. That is right.

Q. Now, I call to your attention Page 13, the first sentence in the last paragraph of the page which reads as follows:

"The Committee believes that any attempt to lay down detailed procedures for all business enterprises or otherwise to straightjacket cost justification would [fol. 25] be self-defeating."

I ask you again if that not only represents the opinion of the Committee but also is your considered opinion?

A. It is.

Q. Now, Professor Taggart, there is no basic difference there between a study to show cost justification under the Robinson-Patman Act and a study made by management to determine a sound pricing schedule or to determine where to concentrate sales effort or to omit such effort? Both deal with ascertainment of economic facts, do they not?

A. To that extent they certainly resemble each other.

Q. Don't they resemble each other also in the fact that the same facts vary on both?

A. The same underlying facts, yes. The same basic fact, yes, that is true.

Q. The same type of analysis can produce those facts?

A. Yes. Of course, this certainly needs to be modified in this respect, that every Robinson-Patman cost study is made in terms of a specific complaint, a specific price relationship.

Q. That is true, isn't it very possible their studies are made by businesses to determine what a price schedule [fol. 26] would be that would conform to the Robinson-Patman Act?

A. All this is perfectly true, yes.

Q. So that in those cases the study would be made without reference to specific complaints?

A. Well, that is true. It would be made on the theory, presumably, that a complaint might possibly arise out of a given set of circumstances, but it certainly is not based on an actual complaint.

Q. Well, you are familiar with the results in the Bird case in which it was found that sales to mail order customers, mail order houses, could stand a cost justification, a

difference of 28.5 per cent, where the actual discrimination is less than 20 per cent, is that correct?

(No response)

Q. I call your attention to 335 of the Accountant's Hand Book.

A. Yes, that is right.

Q. Well, now, certainly the ascertainment of the fact by exactly the same processes would be the type of information that would assist, yes, management in determining a pricing policy with respect to the customers for purely business and economic reasons, would it not?

[fol. 27] A. It would be one of the facts they might well take into account, yes.

Q. Well, what I am getting at is this: If I find that a cost difference of ten per cent is justified as between two classes of customers, and I make a price difference of eight per cent in favor of the more economic of those two classes of customers, I am actually making more profit on my sales to that class at the lower price than I am the sales to the other class at a higher price?

A. Yes, in terms of those figures.

Q. So, what I am trying to get at is this: That if I am trying to find out where my profit potentials lie, the same kind of study will give me that information, would it not? Does it not?

A. Broadly speaking, I say that is true.

[fol. 28] Q. Now, I call your attention to Pages 300 and 301 of the Accountants' Hand Book under a section entitled Need for Distribution Costs. It gives four different situations where an accurate knowledge of differentials and distribution costs serve a management or a business function; is that not correct?

A. There are four numbered paragraphs here which seem to point in that direction, yes.

Q. And, as a matter of fact, the same kind of study and the same kind of economic fact would be relevant certainly to the second, third and—and the third types as it would be to the fourth, isn't that correct, the fourth being the Robinson-Patman?

A. I think you better let me read these.

Q. I do not want to hurry you at all.

(Witness examining documents.)

By Mr. Ball:

Q. Would you like to have me restate my question?

A. Maybe you better now that I have read this material.

Q. The point is this: The same kind of a study and the same kind of an economic fact would be relevant to the decisions under the second and third of those items as it would be under the fourth?

[fol. 29] A. In a general way, yes, sir. There is one aspect of the second which, of course, would not be appropriate for the fourth certainly, and that is the second purpose here of studying distribution costs.

It talks about expansion or contraction of sales territories and limits as to size of orders and profit possibilities of new lines, and so on.

Q. Well——

A. Now, then——

Q. Excuse me.

A. There one very important consideration is marginal and differential costs which, of course, would not be suitable for Robinson-Patman purposes.

Q. Well, I am just wondering, Professor Taggart, if that is strictly true, because a cost study that revealed that sales to customers buying below a fixed amount would have a cost which would be greater than the gross amount of the sales income, would certainly indicate a marginal business and suggest a shift in management emphasis, would it not?

A. It might or might not.

Q. Well, you will recall, for example, that I think that \$10 breaking point was one of those in the Standard Brands case, and you pointed out that it was suggested in that [fol. 30] particular classification the cost studies showed that the cost of selling customers buying in the \$10 below bracket, the cost of selling was in excess of the income from sales.

A. Well, this was doubtless total cost including fixed cost as well as variable.

Q. Yes; well, putting it this way, if your cost study disclosed that sales to a given class of customer in a low volume bracket were such and allocated in accordance with the proper principles indicated, that the cost of selling were far greater than the margin, the gross margin between the cost of the product and its selling price, that would suggest

certainly that you were dealing with a marginal product, would it not, with a marginal class of customers, wouldn't it?

A. Well, it would suggest that the business with the customer ought to be regarded with some doubt, shall we say.

Q. Which is one of the purposes indicated in your Paragraph 2?

A. It does not necessarily mean, of course, that business with that customer should be dropped.

Q. But it does make the suggestion of the kind that you have reference to in Paragraph 2, that passage in the [fol. 31] Accountants' Hand Book?

A. Yes, but, of course, the whole needs of Paragraph 2 are not answered by merely a study of total costs including fixed and variable costs.

Q. No, but the general point is that you may have to carry your study of total costs to a more refined point to get the answer required by the problem of Section 2?

A. Well, in a sense, to a less refined point because you can confine your attention pretty much to the cost which would be affected by the particular change which you are contemplating making.

Q. Well, but—

A. You would have to pay no attention to the costs which would not be so affected.

Q. I do not mean to argue, but isn't this true, that your cost study of the kind we are talking about would give you the first clue as to where to make the studies required by 2?

A. Well, that depends on what you mean by the first clue.

Q. Well, let us suppose that again you have the cost study that shows that the costs of selling a particular class [fol. 32] of customers are in excess of the margin between the cost of goods sold and the selling price.

That would certainly suggest the possibility that you were dealing with a marginal class of customers?

A. Oh, surely, yes.

Q. So it would lead you directly into a study of the kind referred to in Paragraph 2?

A. It might very well.

Q. The point is that whether the study is made generally for the purpose of two, three or four, the basis is always to

find the facts upon which a reasonable business judgment can be based, isn't it?

A. That is correct.

Q. Now, if I may call your attention——

A. Incidentally, may I point out that these paragraphs that have been referred to are not my language. I simply took them from a published source.

Q. It so indicates in the text that this was from the Pathfinder Service Bulletin No. 154; but I assumed, Professor Taggart, that you did include them in this section because you were in agreement with the principles there stated.

[fol. 33] A. I think generally this would be correct.

Q. Now, I call your attention to this passage on Page 336 of the Accountants' Hand Book, and I am going to identify it.

"Every analysis presented for Robinson-Patman purposes must stand on its own feet. No general pattern of such analysis to follow is available."

Now, that states a principle, I think, in which you are in full agreement, even though you wrote that sometime ago.

A. Well, this has always been true as far as I know, and it still is.

Q. It is also true, isn't it, that where you have a fairly wide margin of justification quibbling over precise methods of allocation is unimportant in such a study as we have before us?

A. With the proper definition of "fairly wide," yes.

Q. Well, what would be your concept of fairly wide?

A. It depends on the circumstances.

Q. Well, what did you mean when you said in reference to the Bird case that:

"No amount of quibbling over precise methods of allocation would have substantially affected the conclusion."

[fol. 34] It is a sentence which appears on Page 336 of the Accountants' Hand Book.

A. Well, I think that at the time I thought—I beg your pardon, where is this thing now?

Q. The first full sentence (indicating).

A. Oh, yes. Thank you. I think at the time that was my opinion.

Q. Well, it still is, isn't it?

A. I am inclined to think so, but it is difficult to keep the precise details of all these cases in mind.

Q. Yes; but when you wrote that you were of the opinion that the type of margin shown by the figures in the Bird case was sufficient and it was enough to obviate any value in quibbling over the precise methods of allocation.

A. It was a margin, as I recall, of some  $8\frac{1}{2}$  per cent roughly in a total of some 28 or 29 per cent, and this is a pretty substantial margin where the study is reasonably detailed and carefully worked out.

Q. But in a case where the price differential was pretty substantial, too?

A. The price differential was quite substantial, that is true.

[fol. 35] Q. Now, turning attention particularly to the survey which was described and explained in the Borden pre-trial order, do you recall generally the nature of that survey?

A. Very generally.

Q. Do you recall, Professor Taggart, that it was one that was based upon the cost of distribution of all fluid milk products without any attempt to break down the costs as between the various fluid milk products, such as milk, cream and cottage cheese; were you aware of that fact?

A. I assume that that is true. I have no recollection that there was any attempt at such a breakdown.

Q. Now, it is quite proper, is it not, in your opinion, that such a set of commodities or such a grouping of commodities is an entirely proper one for the purpose of a cost study when the purpose is not limited to the ascertainment of a fact with respect to a particular commodity?

A. You mean to pose a situation where a particular commodity is not involved?

Q. No. The discounts—let me remind that in the Borden study we were dealing with a program of discounts that were given on the total purchases by the retail customers—[fol. 36] by the retailer customers, these being sales to retailers, based upon their total purchases of fluid milk



products, and that the study was related to the costs of delivering all fluid milk products to those customers.

Now, it is quite proper, is it not, to lump all the products under those circumstances together in making your study?

A. Well, not necessarily. It might be quite proper, but if some company or if some customers, for example, take substantial shipments of one commodity and other customers specialize in a different commodity, it may well be that the costs as between commodities would be sufficiently different so that you should ascertain costs by individual commodities or more precisely commodity groups.

Q. Well, now, you do not recall apparently that there was a specific testimony set forth in this pre-trial order that these retail customers purchased the various commodities in approximately the same proportions?

A. Oh, if they purchased in substantially the same proportions then I would go along with it; yes, sir.

Q. I call particular attention to the language in the Cost [fol. 37] Justification Report, which appears on Page 8 under 5:

“The prices to be compared in Robinson-Patman Act cases may be those of individual commodities or of a group or set where different items are normally bought and sold as a set or a weighted average of the prices of a line of related products.”

Now, that states a principle with which you are in accord, doesn't it?

A. Yes, wherein the purchases are actually made as described here.

Q. And in the case where retail customers, retail stores buy the various fluid milk products to serve essentially the same type of customer demand in relation to proportions of cream, milk, potatoes, and so forth, that would be an appropriate one for the use of the study of the set as against individual commodities?

A. That may very well be true.

Q. At least you raised no question about that when you reviewed the Borden pre-trial order?

A. That is right, because I presume that I was making that assumption.

[fol. 38] Q. But you must have made it because it ap-

peared natural to make it under those circumstances, if I can speculate with you. At least you raised no question about the validity of the report on that ground.

A. Not in this testimony, no.

Q. Well, or otherwise?

A. Oh, I am sure that I inquired from Mr. Woolley concerning this matter. I have no doubt that I asked him whether these customers took the various commodities involved in reasonably similar proportions, because if this were not true, then this study is false.

Q. Now, do you recall that in this study the dollars of vacation pay were permitted to follow or be allocated in the same way as payroll dollars?

A. If you say so, now, then this is correct.

Q. Well, abstractly, that is a proper method of allocation, is it not?

A. Oh, yes.

Q. Now, you will recall that the study described and set forth in the Borden pretrial order did not include any study of differences in costs of manufacture; you were aware of that fact?

A. I think this is true.

[fol. 39] Q. Now, you are in agreement, are you not, that that was entirely proper not to include a study of costs of manufacture in this study of distribution costs?

A. I should think so, that is, I had no knowledge of the dairy industry that would lead me to believe that a study of manufacturing costs would be particularly fruitful.

Q. And so you find it is quite proper when you are dealing with this kind of study to limit your study to differences of costs of distribution without an attempt to go into the problem of costs of manufacture?

A. I see no reason to assume otherwise.

Q. Now, you recall that the Borden survey, as distinct from the Bowman survey, was based upon a time study of each route for a week?

A. I recall that a time-study man was sent out on routes with a stop watch to see what the drivers did.

Q. Now, in your opinion, Professor Taggart, the sampling of the facts made by that method was an entirely proper one for this type of a cost study?

A. Well, let me put it this way. Sampling is an entirely proper method. I should not like to express an [fol. 40] affirmative opinion here as to whether the sample was adequate or not. I have no reason to assume that it wasn't.

Q. Well, assume these facts, Professor Taggart: Assume that the pattern of consumption remained essentially the same throughout the year; there would be no reason to believe that a test for a week on deliveries would be any other than an adequate sampling?

Mr. Jenkinson: Well, I object to that question as irrelevant and incompetent and immaterial and of no value to the case.

Mr. Ball: There is an express statement in the record to that effect.

Mr. Jenkinson: I am just objecting.

By Mr. Ball:

Q. This is one time you can answer despite the objection.

A. Well, the only thing I can think of that might cause one to wonder whether one week, one particular week was a fair sample, might be such a thing as seasonal variation, for example, in the delivery and consumption of dairy products.

Q. Now, that would be mitigated, would it not, by the [fol. 41] fact that the samples were made on different weeks, on different routes over a period of five weeks, that would minimize any error of that kind?

A. Well, seasonal fluctuations do not show up in that length of time. I am thinking of the difference between summer and winter for example.

Q. But in the absence of a showing of marked seasonal variations, the sampling would otherwise prove to be adequate?

A. A thorough sample for a single week might be entirely accurate.

Q. Now, you recall that in the Standard Brands Case, about which you have written, there was a six-day sampling which you did regard as adequate in that particular sampling?

A. Not only I regarded it as such but the Federal Trade Commission accountants saw no objection to it.

Q. So that under the circumstances comparable to that disclosed in the Standard Brands Survey, a six-day sample would be adequate?

A. Yes, I think so.

Q. Now, it is true, is it not, that in your opinion estimates made by managers and men in managerial positions [fol. 42] who are inside the business as to the divisions of functions in their relation to service units are entitled to great weight?

A. That is a pretty general question. I would like to know a little more definitely.

Q. What I have in mind is this, that if a man who is in the business itself makes the assumption that a particular function has a direct relationship to a particular type of service unit, that, absent some apparent on-the-face logic to the contrary, that would be entitled to great weight; as against some abstract consideration by someone not familiar with the details of the business?

A. That would be entitled to weight, certainly, but I should like to have any such assumption by anyone backed up by some objective evidence that the assumption is soundly made.

Q. Now, also when the problem comes up as to the matter of time spent on various functions, you do accept as valid a manager's estimate of the time spent on the various functions?

A. Sometimes and under some circumstances, yes.

Q. Well, I call your attention on Page 315 of the Accountants' Handbook where you have set an analysis of [fol. 43] cost of distributing wholesale electric goods, you have apparently accepted as valid a number of divisions of time between functions based upon managers' estimates.

A. This is simply a report on a study done by two employees of the Bureau of Foreign and Domestic Commerce, with which I had nothing to do.

Q. But you must have approved their methods of making it or you undoubtedly would not have included that as illustrative in the Accountants' Handbook.

A. I do not think this is true at all. In other words, that may well be perfectly satisfactory, but the mere fact

that I included this long complicated tabulation in the Accountants' Handbook does not necessarily mean I approve of all aspects of it or that I would have done it the same way if I had been doing this study.

Q. Well, looking at it, though, in specific detail, where you have here for example "Salaries of the Buying Staff Allocated Between Different Functions," and the basis of distribution is given as a manager's estimate, would you regard that as a valid basis for making such a distribution?

A. Under some circumstances and for some purposes, [fol. 44] yes.

Q. Well, would you regard that as a valid one for the purposes of the Robinson-Patman study?

A. I would be inclined to question it.

Q. Would you question it in the absence of contrary evidence?

A. I would seek confirming evidence.

Q. But in the absence of any contradictory evidence, if an effort had been made, that would be entitled to considerable weight?

A. I would present it only for what it is worth.

Mr. Ball: Let's take a short recess here.

(Recess.)

By Mr. Ball:

Q. Professor, Taggart, turn to Page 6 of the pretrial order, Paragraph A. You used the term "Functional Activities." I want to ask you if I understand what you mean. Do you mean that there are certain functions that are performed in the course of distribution which embody several activities, but all of them to accomplish the same function, is that correct?

A. Well, frankly, I think that this term Functional Activities is slightly redundant. I believe the term "Func-[fol. 45] tions" could be used or the term "Activities" could be used, as a matter of fact.

Functions are sometimes conceived of rather broadly. Take the function of selling, for instance. It may include a number of things, that is, it may include calls by salesmen, it may include mail solicitation, it may include tele-

phoning, a number of things that could well be described as activities, or they could even be described as functions.

Q. Well, in a broader sense a function might be a broader term than activity, a function could include several activities?

A. Well, this could be, certainly.

Q. Now, I call your attention, for example, to Page 25 of the cost justification report, and I notice at the bottom of the page a list of some eight distribution cost functions of an integrated manufacturing company. Now, that would be an illustration of what you mean by functions, is that correct?

A. That is right.

[fol. 46] Q. And any one of those functions might include a number of activities?

A. Or they are sometimes called sub-functions. This is a term that is used quite a little bit.

Q. Well, also I call your attention to Page 316 of the Accountants' Hand Book where there are a long list of functions and a comparable list of service units. I take it that that was a list that would be regarded by you as illustrative of the meaning of the word "function"?

A. It is illustrative only, that is correct.

Q. Well, this is not one you copied from someone else in that case, is it, Professor Taggart? This is one you developed yourself?

A. Oh, no; I assembled this from a very large number of studies that various people had made at various times.

Q. And in this particular case you do approve the fact that this represents your concept of a function?

A. I think so, yes.

Q. Now, I am going to ask you to turn to your Paragraph B and explain just what you mean by the use of the word "should" in that particular paragraph, on the top of Page 7.

[fol. 47] Mr. Jinkinson: Here (indicating).

By the Witness:

A. Oh, yes. Well, this is talking about—when it says, "Cost Elements," it is talking about what are frequently called natural expenses, natural divisions of costs, such as, oh, compensation of employees or supplies, insurance.

Q. Payroll is a cost?

A. Taxes and the like. Yes, payroll would be.

Q. But payroll could apply to several different functions?

A. That is correct.

Q. And what you are trying to say is you should take a cost element such as payroll and find out how it should be allocated as between functions?

A. That is right, yes.

Q. And that is in essence what you were trying to say in this paragraph, am I correct? I want to be sure I understand you.

A. Well, it actually goes a little farther than that, of course.

Q. Well, then, explain to me.

A. Because down here in the middle of the paragraph [fol. 48] it says, "Allocated to his sources (functions, products and customers.)"

In other words, I am going a little farther here and simply saying that payrolls should be allocated among functions, and also implying at least that the functions in turn must be carried on to their logical allocations to commodities, customers, territories, whatever the end use may be.

Q. Yes; where the commodity is as it is in this survey fluid milk and all of the costs, the payroll costs of drivers of delivery trucks are all connected with the delivery of fluid milk, you do not have a problem of allocating it to products, then, do you?

A. Well, I think we settled that problem a little while back.

Q. Yes.

A. For practical purposes.

Q. We regard this as a single product.

A. An allocation for products presumably was not called for.

Q. Then what you are saying is that we should take the various cost elements such as payroll, allocate them to the functions, and in turn allocate total costs of the [fol. 49] function to the class of customer that would be involved?

A. That would be involved, yes, that is correct.



**Q.** Well, if I add then that second step of first allocating the cost element to the function and then the cost of the function to the class of customer, that is really what we have in the problem of the kind that is now under consideration.

**A.** That carries it out to its logical conclusion.

**Q.** Now, in making this allocation of the cost of a function, it is ordinarily done by separating first between directly allocable functions and those that are either joint functions or indirect or non-allocable—not non-allocable, indirect or joint functions; is that correct?

**A.** Spoken like an accountant. That is correct.

**Q.** Now, in the case of the directly allocable functions, we have no problem, we merely find out where that applies?

**A.** Strictly speaking. Of course, the word allocation does not exactly apply here. It is a direct charge. It is allocation only in a very broad sense.

Accountants usually use the term allocation in connection with indirect costs.

[fol. 50] **Q.** Then what we should say is an application rather than allocation?

**A.** Yes, essentially I think that is a little more precise.

**Q.** In other words, if a salesman is hired to spend all of his time soliciting a single customer, the cost of his function would be applicable to that customer?

**A.** I think you are right.

[fol. 51] **Q.** But now when you have either joint or indirect functions you generally have to find a method of allocation for them between classes of customers if that is the object of the analysis?

**A.** Yes, you do.

**Q.** Now, you usually do that by finding what you call a service unit, isn't that right?

**A.** Commonly it is done that way, yes.

**Q.** Well, there would be two methods; in certain of the indirect costs the indirect would be permitted to follow the direct?

**A.** Well, yes, this is true. Of course, this implies that a service unit of the indirect cost is reasonably measured by the direct costs.

**Q.** Well, what you are saying is you prefer to use the concept of a service unit in all cases although the service

unit may be ascertained merely by a reference to the previously allocated costs?

A. I think that is a fair statement, yes.

Q. Now, to illustrate what we mean by a service unit, I take it that again the list that appears on Page 316 of the Accountants' Handbook would provide illustrations in your own words.

There you have the list of functions, then you have the [fol. 52] possible service units that might be used for allocating the cost of those functions.

A. These are possible service units, yes.

Q. And again turning to the cost justification report on Page 28 you have in the black type at the bottom of the page the various functions and then you have behind the colon following the illustrative service units that might be used in allocating the cost of the function described in the black print?

A. Yes, that is correct.

Q. For example, here where you have, well, the subject sales promotion, sales promotion is the function, if I am using your term correctly?

A. That is right. That harks back to the tabulation we previously talked about.

Q. Yes; and then there might be a choice as far as service units of the following: number of promotional calls for 1, time of sales promotion personnel for 2, or basis of promotional literature might be a third choice of service units; is that correct.

A. This, of course, depends on the character of the sales promotion, how to carry it out, and so on.

Q. So much of the problem in a cost survey is the ascertainment and selection of a service unit to be used in [fol. 53] allocating the cost of the function?

A. This is a very important part of it.

Q. And that again is very largely a matter of judgment, is it not?

A. Judgment enters into it to some extent without any doubt.

Q. Well, again you say that two accountants working for the same one will generally come up with different results because their judgment of the same facts will usually be somewhat different; is that a fact?

A. Well, they might, but do not carry that too far.

Q. Well, I hope that you will agree entirely with us before we are through, Professor Taggart.

Now, I call your attention to Page 15 of the cost justification report, under the heading Direct and Indirect Costs, and I ask you if that does not express—well, the first paragraph I will read:

“Costs separately incurred for any given product, customer or group of customers are readily assigned. These are direct costs.

“On the other hand, indirect costs which are jointly incurred for two or more products, customers or [fol. 54] groups of customers must be allocated before total costs for any given category can be ascertained.”

Now, that expresses your point of view, does it not?

A. This is what we were talking about a while ago.

Q. I wanted merely to tie in what we are talking about to the language of the cost justification report.

A. Oh, yes.

Q. My colleague points out that there might be some ambiguity to a reader of your deposition. Do you mean that you do find in this paragraph that I read on Page 15 of the cost justification report an expression in which you were in agreement of the difference between direct and indirect costs and the distinction in the handling of the two?

A. There is an expression of the distinction in the handling of the two, yes. There is not a definition either of direct or indirect costs here.

Q. That definition could be found more or less by looking—no, cancel that.

Now, it is often true, is it not, that in the selection of a service unit to be used you are perfectly free to choose [fol. 55] more than one with equal validity?

A. I would hate to say that was often.

Q. Well, it would be in many cases, wouldn't it?

A. I am sure it does happen sometimes, yes.

[fol. 56] Q. Well, I call your attention on Page 28 of the Cost Justification Report, and in the first full para-

graph I want to read these two sentences: "The relationships of other functions to the costing segments—"

A. Beg pardon, where are you reading?

Q. Beginning the second sentence in the first full paragraph.

A. Oh, thank you.

Q. (Continuing)

"The relationships of other functions to the costing segments are more remote, the choice of service unit which will adequately measure a given relationship is of greater difficulty; in many cases more than one service unit might be chosen."

A. That is what it says.

Q. And you are in agreement with that? I am going to read the rest of it.

A. Please remember we are talking here about indirect or more remote relationships.

Q. Well, now, that is a matter of degree, isn't it, Professor?

[fol. 57] A. Well, yes, some are more remote than others, it is perfectly true.

Q. In fact, you do not know just where you would limit this application, do you?

A. It isn't true that one function is remote and the other is absolutely not remote. It may vary in degree.

Q. Now, I call your attention to another sentence here, because I want to ask you again about your judgment:

"Different service units will yield—"

I think there was a misprint there—quoting again,

"will yield different dollars and cents results, and a particular service unit should not be chosen merely because it makes maximises cost differences. Where the choice is otherwise a matter of indifference, however, there can be no objection to the choice of the method which produces the most desirable results."

Now, you are in accordance with the principle there stated?

A. That is correct.

Q. And you do recognize that there are not infrequent instances where that principle can apply?

A. It happens every once in a while, particularly when you are dealing with indirect and rather remote functions. [fol. 58]

Q. Yes; now, it is also true that it is not a necessary part of a cost study to use a direct allocation of every cost that is susceptible to such an allocation?

A. Well, the only important exception I can think of would be where the cost is a rather minor one and where it just would not pay to take the trouble to do it in the most accurate fashion.

Q. Well, let's look at Page 27 of the Cost Justification Report. The bottom paragraph, let me read it to you and ask if this does not express your opinion:

"At the outset caution should be exercised with respect to overemphasis on the distinction between direct and indirect costs. This distinction should not be made for minor items of cost or for those where treatment of potentially direct items by a satisfactory application of the indirect procedure will produce completely reliable results."

A. This is perfectly correct in general terms, yes.

Q. Then going on:

"Establishment and maintenance of the necessary [fol. 59] bookkeeping routines for tabulating all direct costs is burdensome and is justified only where the amounts involved are appreciable and satisfactory results cannot be obtained by other and less expensive methods."

And going on:

"In many cases the indirect functional approach using an uncontroversial unit of functional service will produce acceptable results."

Again, that states principle with which you are in accord?

A. Oh, yes, this is true. In other words, if you keep track of these particular minor direct costs very meticulously

ously, every penny's worth, showed exactly where it landed, the result might well be not at all different than if you threw it in with some item of overhead or some indirect function and allocated it on a basis concerning which there was no controversy.

[fol. 60] Q. There has to be some rule of reason in the detail with which you have to make those analyses.

A. To be sure, yes.

Q. Now, I am going to call your attention to Page 320 in the Accountants' Handbook, and I call your attention here (indicating).

Again this may not have been your own opinion, but it was based on a study of the Bureau of Foreign and Domestic Commerce. Here was a description of the function of administration and you indicated the service unit chosen was dollar of previously allocated expense. Now, that would represent what you mean by letting the indirect follow the direct, but defining it as a matter of using the previous allocated expenses?

A. This is an example, yes.

Q. And that is a very proper method of making such allocations?

A. Well, for certain kinds of expense, yes, this is true.

Q. Now, I give you still a different illustration here, which appears on Page 327 of the Accountants' Handbook, where the function is described as supervision and other selling cost and the service unit is dollar of salesman's [fol. 61] costs.

Now, there is a case where overhead or indirect expense is allowed to follow the direct expense, is that correct?

A. This is done frequently, yes.

Q. And it is an approved method of allocation?

A. Approved if the circumstances are such that it appears suitable in a particular case.

Q. Now, I call your attention, for example, to Page 27—I beg your pardon, no, 28, of the cost justification report. Now, I call your attention that one function listed as operating service—Now that operating service is the function which is defined previously on Page 26 in the fifth full paragraph, as follows:

“The operating service function includes the cost of sales office, clerical work and administration of the

physical aspects of the distribution operations. Usually these activities are of greater cost importance when an organization is decentralized than when it is [fol. 62] centralized."

Now, that is the definition of what you mean by an operating service function in the first sentence that I have read, is that correct?

A. Well, that is what it says.

Q. But are you in agreement?

A. This happens to be a part of the report that I did not write.

Q. But generally you are familiar with it as a work of your committee?

A. Oh, yes.

Q. You approved it?

A. I think I would be in agreement with that, yes.

Q. Now, turning to Page 28, I notice that the operating service, it is stated that that could be treated, and I quote:

"—treated as overhead of selling in technical service function and allocated on the same basis."

Now, that again would be a perfectly approved method of such allocation?

A. Well, it might be under some circumstances.

[fol. 63] Q. Well, now—

A. I would have to examine the facts of an individual case before I would necessarily agree that every function or subfunction or activity that came under the general head of operating service should be treated in that way.

Remember that what we are doing here in this report is simply showing illustrations of things that might be suitable in a given case. We very definitely did not attempt to tie anyone down to say this is the way and the only way that this should be done.

These are some of the ways that you might consider as possibilities.

Q. Well, what you do, though, you recognize and you approve when you list them on Page 28 that these are proper methods to be considered?

A. They are proper to be considered, certainly.



**Q.** And that this kind of a method is in accordance with accounting principles unless there is some fact to show to the contrary?

**A.** Well, it might make sense, let's put it that way. I do not like to get into this question of being in accordance with accounting principles.

[fol. 64] Accounting principles is a very vague term and it means all things to all men, so I would prefer to adhere to the principles of logic or common sense.

**Q.** Well, let us put it this way: Certainly you would not have put in this as a possible method of treating of allocating operating service unless you recognized that there were many situations under which that would be a method approved by a general consensus of accounting opinion?

**A.** If you leave the word "many" out, I will go along; it is certainly common, yes.

**Q.** Now, I call your attention in the Accountants' Handbook on Page 328, a tabulation there. I ask you if that is one which represents or is in accordance with principles that you approve of.

**A.** This relates to a study of wholesale druggist operations and was prepared by a man by the name of Carrol for the Bureau of Foreign and Domestic Commerce back in the late 20's or early 30's. I should hate to say that I approved it or disapproved it.

[fol. 65] It is in here as an illustration of something that was done for the purpose intended. Incidentally, the purpose intended had nothing to do with the Robinson-Patman Act.

**Q.** No, but it had, I assume, some management function purpose, did it not?

**A.** Well, the Bureau of Foreign and Domestic Commerce at that time was worrying about problems of retail and wholesale distribution. They were trying to help these people out to some extent, trying to show them how they might analyze their operations without expending too much effort.

Actually, that was written, of course, before the Robinson-Patman Act was even passed, if I am not mistaken.

**Q.** Sure. You do not think that the accounting principles have changed particularly because of the passing of the Robinson-Patman Act?

**MICRO CARD**

TRADE

MARK



**22**

**625**



**161**



A. No, but I do have this feeling, that an analysis for Robinson-Patman purposes presents some problems which might perhaps for purely internal purposes not be allowed to worry anybody very much.

Q. Now, you will recall that you did have some para-[fol. 66] graphs in the Accountants' Hand Book about the Bird case——

Mr. Ball: Mr. Reporter, that is B-i-r-d.

By Mr. Ball:

Q. (Continuing)—and you will notice there a classification was made between mail order houses, jobbers, retailers, and others, and you commented, did you not, that:

“Every analysis presented for Robinson-Patman purposes must stand on its own feet. No general pattern for such analysis to follow is available. In these cases analysis by customer classes will always be involved.”

I think you would assume that that expresses your present opinion as well as your opinion then?

A. Well, yes, although you can very easily get into analysis not by customer classes but by individual customers in some of these cases.

Q. But you went on to say: “Occasionally analysis by individual customers may be necessary.”

A. Well, all right.

Q. But that would be, I think, by your own terms, the rare instance?

[fol. 67] A. Well, that isn't the usual way in which Robinson-Patman questions are presented.

Q. They are usually presented by customer classifications?

A. Yes, I think that is a fair statement; of course, note that, for example, in treble damage suits under Section 4, the usual problem is a particular customer against other individual customers, sometimes, other customer classes, depending on the circumstances, but in all cases the cost of selling to an individual customer is a question which has to be met.

**Q.** But almost invariably it is determined by comparing the class to which the customer belongs with the other class which gets the discrimination, is that right?

**A.** American Can Company tried that and did not succeed too well.

**Q.** Now, I call your attention to Page 11 of the Cost Justification Report. I will read you as follows—I take it this part was part with which you did have some authorship:

“Classification or grouping of customers, orders, commodities, and transactions has repeatedly been recognized by the Federal Trade Commission as a [fol. 68] valid business practice. What this means is that it is not necessary to cost justify each sales transaction or sale to each individual customer.

“This is important for cost justification purposes, since if no transaction or customer could be treated as a member of class or group, the cost of making each individual sale would have to be ascertained.

“Such refinement would be outside the realm of practicality and would tend to make price uniformity a necessity regardless of economies of manufacture, sale or delivery in dealing with certain customers.”

Now, I take it that that does represent your considered views?

**A.** I think I probably wrote that.

**Mr. Hart:** May I say this off record?

(Discussion had off the record.)

[fol. 69] **By Mr. Ball:**

**Q.** Now, Professor Taggart, I want to return to a particular statement you made here. I am looking at your Paragraphs E and F on Page 8.

So far as you know, the Borden survey followed the principles set forth in those two paragraphs, is that correct?

**A.** Well, I think two things ought to be said. The Borden study, as I recall, broke down the driver's activities into some 40, I believe, pieces.

Certain of those subfunctions or activities, related primarily to his procedures at the premises of customers, that is, after he got there. The balance of them related to his other activities, that is, on the road and at the platform, or wherever he found his truck, and so on and so forth.

In other words, the Borden study didn't, as I suggest here, as I say in Paragraph E, Page 8, simply content itself with breaking the driver's activities into two major classifications; they went a lot farther than that.

Q. Well, that is not a vice in the study, is it?

A. Not necessarily; if the person that is paying the bill is willing to pay for it. So that I can say with respect to [fol. 70] a Borden study, Paragraph E was adhered to and then some in the sense that the driver's activities were definitely broken into various functions or subfunctions, whatever you want to call them.

Q. Maybe in this case you should call them sub-subfunctions.

A. Yes. All right. They belong in the sub-subbasement, the functional hierarchy.

Q. Yes.

Now, with respect to Paragraph F, Paragraph F appears to relate entirely to the activities which the driver performs at the premises of the customer.

A. Yes.

Q. Those would be what you would call direct?

A. Well, yes, I think that is not unreasonable to call them direct.

Q. And what you are saying is that those as direct should be allocated on a direct basis to the classes of customers?

A. Well, what it says is, to be exact: "Should be allocated among the store customers on the basis of the time study."

It does not say necessarily that it needs to be allocated to individual customers. It just says among the customers.

[fol. 71] Q. What I am getting at, there is implied in neither E or F any criticism of the adequacy of the Borden study?

A. I do not think so, no. I do not think—I think you are right.

Q. That is just what I wanted to be sure about.

A. I was not attempting to be critical in E and F, that is right. This does not mean that I would agree in every last detail with what these 40 activities—with the way the 40 activities were handled necessarily, but the general thought of breaking his total job down into activities, I certainly would agree with.

Q. What I am trying to find out, Professor Taggart, here is that this is your direct testimony and I am trying to find out exactly what you meant by it.

A. Yes, of course.

Q. Now, I want to go back to Page 7 and look at Paragraph C. Now, you say here that, "Central office expenses omitted by Defendant Borden——"

Now, are you aware of the fact—I want to call your attention to the pages 74, 75 and 76 of the Borden pretrial order. It sets forth the dollar amounts of a large number of expenses, including central office and others, the numbers [fol. 72] of which are shown in Paragraph 108.

Now, you did not mean to imply, did you, in any way when you say that central office expenses omitted that, no reference was made in the order to such expenses?

A. Oh, I think there was reference to the Borden material, yes. I did not mean that they weren't even mentioned.

Q. Now, the Borden study, Professor Taggart, sets forth the dollar amount of sales by classes of customers. It sets forth certain expenses which are directly allocable to classes of customers which would create some differences in cents per dollar of sales.

Now, any expense which would not be allocated would have exactly the same effect as if it were allocated in relation to the dollar value of sales to the customers, would it not, so far as the effect upon the existence or non-existence of justification for differentials and prices?

A. You left it out completely. In other words, it would have the same effect as if you put it in and allocated it on the basis of list sales dollars.

[fol. 73] Q. Yes.

A. Or, well, if it were allocated, allocated on the basis of list sales dollars?

Q. Yes, on gross sales dollars in the Borden case.

A. Yes.

Q. You understand the computations?

A. Yes, that is true.

Q. So, regarding the order as really setting forth the basic facts, all of the facts then are presented fully without omissions since you have the dollar amount of expenses not allocated and you have the sales, then you could make the allocations——

A. Well, all the facts as to total costs are presumably presented.

Q. Yes.

A. This does not mean that all of the facts that might be pertinent are presented.

Q. No, but you do not know of any facts that were not presented of your own knowledge?

A. Of my own knowledge, I do not know.

Q. Now, when you say in C that "Central office expenses were omitted by Defendant Borden," you were not correct in the sense that the information was omitted from the pretrial order itself?

[fol. 74] A. Well, the choice of words was unfortunate; "omitted" is perhaps a little too broad a word.

[fol. 75] Q. It carries connotations you did not intend?

A. That is correct.

Q. And the result is exactly the same as if those expenses had been allocated in relation to the gross dollar sales?

A. The results are the same in this sense, that there is derived from these costs no differential.

Q. That is right.

A. Of any kind for dollar sales.

Q. It would neither increase or decrease the differential indicated by the figures that have been allocated on a different basis.

Q. Well, if you allocated them on a dollar sales basis, it would not decrease or increase.

Q. Yes; you do not know, as a fact, do you, Professor Taggart, whether executives and their office staffs spend any time obtaining and maintaining customer accounts?

A. As a fact, I do not know it.

Q. And unless that were a fact there would be no point in attempting to allocate the time of executives and their office staffs in connection with the times allegedly so spent?

A. Well, I think this probably is true.



[fol. 76] Q. Incidentally, what do you mean by "maintaining customer accounts"?

A. Keeping them happy.

Q. Now, I call your attention to a sentence entitled, "Fixed and variable costs" at Page 337 of the Accountants' Hand Book, and I call particularly your attention to this section here:

"An example is truck deliveries. If regular truck delivery service is maintained over certain routes, the total costs of operating the trucks is a relatively fixed amount, including gasoline, wages of drivers, and all other items.

"Comparatively little difference is caused by weight or bulk of goods carried or the size of individual orders, although the number of delivery stops has some influence on the time required and may affect certain cost elements."

Now, that sentence expresses your considered judgment, does it not?

A. Do you mind if I read the whole paragraph?

Q. No, I certainly do not.

(Witness examining document.)

[fol. 77] By the witness:

A. This is perfectly correct, provided this is read in context. I am talking here not about Robinson-Patman studies at all; I am talking about cost studies for managerial decisions.

I would like to read the short paragraph at the end of this sentence or this particular section which points out what I am talking about here really:

"This substantial degree of fixity has an important bearing on the interpretation of all analyses and on the type of managerial action to be taken."

Note, that we are talking about managerial action.

"The remedies, appropriate for variable costs, are of no avail in connection with fixed costs."

In context, therefore, this is perfectly correct. This I talked about earlier, as a matter of fact, when we were discussing the same subject, namely, decisions whether to add certain customers, routes, products, or on the contrary, where the question of fixed costs against variable costs enters into the picture very importantly.

[fol. 78] Q. Now, I call your attention to Page 316 of the Accountants' Hand Book, and I take it again that this list of functions and service units was one of your devising or compilation?

A. Compilation, preferably.

Q. And in general that represented your considered opinion at the time as appropriate service units to measure the allocation of the functions?

A. Yes, these were actually chosen, as I said before, out of various studies that had been made by various people for various purposes. It is purely illustrative.

It does not necessarily mean that I thought they were good or bad.

Q. But that—

A. But that they had been used.

Q. And they were reasonable alternatives?

A. They might be under the proper circumstances, that is correct.

Q. Now, I call your attention that you list with respect to City delivery choice of service unit, truck mile or hour or order or invoice line or unit of goods sold for City delivery.

You regarded them as all possible service units to be used for measuring the cost of City delivery?

[fol. 79] A. Depending on the analysis and the circumstances under which it is made.

Q. Were you familiar with the delivery route pattern of the wholesale routes making deliveries to store customers in the Chicago market? I mean, did you study that? Are you familiar with how those are worked out?

A. Well, only as far as they were described in the material that I saw.

Q. Now, turning to Page 9 of the report, I am going to

hand you—I call your attention to your first sentence of Paragraph H:

“It is apparent from Paragraph 196 M.D. of Borden’s pre-trial order drivers do exercise some influence on volume delivered, and that such commissions should be allocated to the store customers on the basis of volume of products delivered to each.”

[fol. 80] Now, I hand you this report and I would like to have you point out what it is that you find in Paragraph 196 MD that led you to the conclusion that drivers have any influence over the volume sold upon which their commissions are paid.

A. Well, I think that what I had reference to here is pretty largely this material which says that “the wholesale routemen anticipate the requirements of each individual customer and at the time of delivery leave quantified which in the routeman’s opinion are sufficient to supply the daily sales need of the customer.”

In other words, this seems to place considerable amount of the burden of determining quantity on the driver.

Q. Well, now, you understand, do you not, that if milk is not sold by the retailer, the retail store customer within a specified period of time returns the milk and receives full credit?

A. Yes, this is what I understand.

Q. You understand also that the Commissions paid are on the net points which are after the reduction of returns?

A. I am not sure I would agree to that.

[fol. 81] Q. Well, assume that for the moment.

A. I will accept it as an assumption.

Q. Now, are you aware that—Now, it follows, therefore, does it not, Professor Taggart, that the sales of the retail customer are not in any way, to his customers, are not in any way influenced by the amount of milk delivered provided it is sufficient to cover his daily needs?

A. Well, in a sense this is true. In other words, if he delivers more milk than the store sells it is not to his advantage.

Q. That is right.

A. In that sense you are right.

Q. And there is no way in which the amount of milk he

delivers is going to increase the sales of that store to its customers?

A. No, but it still may well be true that he can help in the display of milk, for example, or perhaps in the merchandising of milk, something of that sort, in such a way as to help the storekeeper in his milk business, to carry on his milk business.

Q. Well, you understand——

A. Thus increase his sales.

Q. Well, but you do not find anything in the descriptions [fol. 82] of the activities of the driver where he does any of that kind of work?

A. The description of the activities of the driver are fairly detailed, but one of the items that is mentioned there is conversation. Now, with what this conversation is about, I do not know, frankly, but it certainly could be this.

Q. But you have no knowledge of it at all that it could be on this subject?

A. I never watched a driver do this, if that is the question.

Q. Now, I call to your attention Page 70, Paragraph 112, and I ask you if you are aware of the facts set forth in Paragraph 112 MD, beginning at the bottom of Page 770.

A. It looks as if the solicitors do this sort of thing as part of their job.

Q. So that the order does show that there is a division of responsibility between the solicitor and the driver and the driver has no responsibility for promotions?

A. I don't recall anything like that. It does not say, as far as I read it, that the driver never does anything of the sort.

[fol. 83] Q. Well, then, you base the assumption—you make the flat statement here that it is apparent from 196 that the drivers do exercise some influence. Now, where is it apparent in 196 that the drivers do exercise that influence on the sales?

A. It says that the drivers determine what the customer's requirements are and they decide how much to leave in effect.

Q. But they do not get paid commissions on the amount they leave, do they?

A. They certainly must exercise some judgment in the amounts they leave, but if they leave more than the customer sells they have to take it back, and that is netted, understand that. There is nothing in this that indicates to me that they might not exert the influence which their daily calls have on these customers to participate in promotional activities, new methods of selling, new methods of display, and so on and so forth.

Q. But, Professor Taggart—

A. It is to everybody's advantage for them to do this.

Q. But there is nothing in Paragraph 196 that says they influence the sales by the customers, is there? You are [fol. 84] drawing this inference from facts outside of what is in 196?

A. Well, 196 does not say that in so many words, but it certainly leaves the door open.

[fol. 85] Q. Well, then, it is inaccurate to say that it is apparent from 196 that the driver is influencing sales?

A. Maybe I should have stated it that the drivers may influence. It certainly is apparent that they may influence, without a doubt.

Q. What you are saying is that you do not know whether they do or not, that they might, and that is the most you can draw, is that correct?

A. Well, I think there is a little more than that, that is, both driver and customer are interested in maximizing the sale of fluid milk products. It is to the mutual advantage of both of them.

It seems a little unlikely to me that a driver who, for example, might notice that the milk sales of a given customer have gone down recently, might not ask the customer, "Well, how come? What have you done? Have you been leaving your cases dirty or doing something to turn your customers away? Have you failed to call your customers' attention to the fact that you sell this product and it is available for them?"

Q. Well, now, Professor Taggart,—

A. "There is some way in which you and I can mutually benefit by increasing your sales of milk."

[fol. 86] Q. Isn't it equally possible he will suggest the solicitor call on the customer?

A. He might in a suitable case, sure, of course.

Q. So there is nothing—

A. He has a real interest in volume. There is certainly no doubt about it.

Q. Now, did you read over or are you aware of the terms of the union contract that covers the compensation of drivers?

A. Well, I saw the union contract.

Q. Now I want to call your attention to Article 4 in the fifth paragraph of the union contract which is in here as an exhibit, a rebuttal exhibit X on Page 1:

“In case a route is too large to be run within the proper time schedule, adjustments, when warranted, shall be made within two weeks by the employer so that such route can be properly serviced within the 45 hour week.

“If adjustments are not made within two weeks after request is made by union representative, such shall be considered in violation of this agreement.”

[fol. 87] And I ask you if that does not indicate the intention of the parties were to fix an overall remuneration for the route as a route, rather than to offer an incentive to produce sales on the part of the driver?

Mr. Jinkinson: To which I object and direct the witness not to answer the question on the grounds he is called upon to interpret the union contract, which, of course, he is not a party to, did not make and knows nothing about the terms thereof.

Mr. Long: He is not a lawyer.

By Mr. Ball:

Q. I will show you the language here.

Well, I am going to withdraw the question and ask this:

In the statement which stands as your direct testimony in Paragraph H on Page 9, did you take into account or were you aware of this provision of the union contract? (indicating)

A. I think it is safe to say that I have not read that provision of the union contract.

Q. Now, I want to read you also another provision from Article 25 of the union contract:

[fol. 88] "It is agreed that no employee shall be required to deliver more goods than he can adequately serve within the regular working time specified in this agreement."

I ask you if you were aware of that provision at the time this paragraph H was drafted?

A. I would say I assume that I had not read that particular paragraph.

Q. Now, I want to read you Article 24:

"It is further agreed by the employer that when a route is split, the driver whose route is so divided shall have first choice of the two routes with full pay for the six months following or such part thereof as he continues in the employment of the employer, to be governed by the 30 days average sales previously dividing said route."

Were you aware of that provision at the time Paragraph H was drafted?

A. Again I doubt very much if I read that provision.

Q. Now, were you aware when you drafted that paragraph that on the basis of seniority a driver could bid for a route that had a larger total number of aggregate [fol. 89] points?

A. Bid for a route?

Q. Yes, that became open.

A. I do not understand what you mean by bidding for a route.

Q. Were you aware that if a route were opened for a new driver that—

A. Oh.

Q. (Continuing) —that those who had seniority could bid for it in the order of their seniority and obtain it from the employer if the route had more points than the route which they were serving.

A. You mean by bid, simply make a request?

Q. That they would be entitled to.

A. Now, I think I have forgotten the question.



Q. Were you aware when Paragraph H was written, that a driver at any time who had seniority could request and compel his transfer to a route which was open?

A. I am sure I was not aware of that.

Q. Were you aware of the fact that under the union contract that the men on so-called bulk wholesale routes were not paid any commission but received a flat salary only under the same contract?

[fol. 90] A. I do not know what a bulk wholesale route is.

Q. Well, that is a route serving restaurants and stores,—

A. Oh, I see.

Q. (Continuing) —and hotels and drug stores?

A. Part of the milk is consumed on the premises, is that what you mean?

Q. Well, yes, generally. Generally that is considered the inside of buildings. Restaurants, hotels, drug stores, certain routes composed of those customers, only the drivers received only salary and no commission on sales.

A. I think I have been told that at some time or another, but when I do not know.

Q. Did you take that into consideration when Paragraph H was drafted?

A. No, because we are not dealing with that kind of route here.

Q. But you were dealing—but you understand that that was provided for in the same union contract, do you not?

A. If that is what you say.

Q. You did not take that fact into consideration?

A. No.

[fol. 91] Q. What was your understanding as to how the routes—as to who determined the routes and the customers to be placed on different routes?

A. I do not think anybody ever told me precisely who does this. Obviously, it would be someone in charge of the operations, retail operation, whoever might be involved, perhaps with the union, for all I know.

Q. Did you take account of that fact in the drafting of Paragraph 8 or did you consider it not relevant?

A. Frankly, I do not think it is very pertinent.

Q. Do you know whether or not a driver was permitted to solicit a new customer?

A. This I do not know.

Q. Now, there is no invariable rule of accounting that requires commissions always or compensation based on volume of sales always to be allocated on the basis of sales, is there?

A. No. It certainly is the most common way to do it, but this isn't necessarily an ironclad rule.

Q. Well, allocating compensation which is measured by the volume of sales can be done on other bases than allocating it in proportion to sales, can it not?

A. It could be under suitable circumstances.

Q. And those circumstances might exist in this present [fol. 92] case so far as you know?

A. Well, it might, but it did not seem to me that they did.

Q. You were basing that only upon the matters that you considered when you wrote Paragraph H?

A. Yes. Of course, remember that I had discussed the milk business with Mr. Wool-ey, and to some extent with Mr. Jinkinson.

Q. Well, now, did you base your opinion in H partly upon what Mr. Wool-ey told you?

A. Oh, I think so, yes. It confirmed an impression that was created by whatever paragraph this number is here.

Mr. Long: 196, I believe.

By the Witness:

A. (Continuing) —196 M.D.

Mr. Ball: Let's take a short recess, shall we?

(A recess taken.)

By Mr. Ball:

Q. Now, Professor Taggart, I would like to call your attention to Page 119 of the Borden pre-trial order. I call your attention to Item 23 and ask you if that is the matter that you had reference to as to the opportunity of [fol. 93] the driver to influence sales to a store.

A. Well, this would certainly give him an opportunity to do that, yes.

Q. Yes; and that is the only item there that you had reference to, isn't it?

A. Well, I would have to review all these forty items to make absolutely sure.

Q. That is the one you had in mind?

A. This is certainly the one I had in mind, that is right.

Q. Yes; well, would you like to review those forty, because I would like to see if there were any others that you thought had any effect on this. It starts on Page 114.

A. Well, I should think Item 9, for example, might give some opportunity for the driver to exert the arts of salesmanship. Sometimes a customer will require more merchandise than the amount estimated by the routeman.

Q. Well, does that indicate that the routeman has done any selling of the store manager?

A. It might, it could; certainly could.

Q. You notice that the word is "required?"

[fol. 94] A. It could very well be. Why does he require it? Perhaps because the routeman made a suggestion.

Q. And perhaps because his customers had increased in number and were using more milk, that is also true?

A. That would be very nice.

Q. Huh?

A. That would be very nice.

Q. I mean, it is equally a possible reason?

A. Sure, but the point is it might very well be at the suggestion of the routeman.

Q. Will you go ahead?

A. I might point out there are a number of other activities, whereas, the routeman certainly has pretty direct contact with the owner or manager of a store, there is nothing in the time study to indicate that at least occasional bits of conversation may not take place then.

Collecting credit accounts, securing customer signature for credit deliveries, somebody in some degree of authority is accessible to the driver at these times. The time study, while it includes Item 23, there is no proof that the

time study man clicked his watch every time he heard the driver say a word or two to the customer.

[fol. 95] Obviously, if he spent quite a little bit of time pointing out to the customer how he could do business better, I would say it probably would belong under Item 23; but, then this—very likely then he would be caught by the time study man, but this does not necessarily mean that the time study man catches all the conversation that goes on and records it under Item 23.

Q. Do you recall what the instructions were to the time study man in recording Item 23?

A. I do not remember whether I saw those instructions or not. I might have.

Q. Go ahead.

A. I am not sure.

Q. Are there any other items in here that indicate any possible activity on the part of the driver that would influence the sales by the retailer?

A. Well, most of the rest of these, of course, take place off the customer's premises, not entirely, that is, but, well, I think approximately in Item 23.

It looks as if the rest of the operations here take place off the customer's premises, so that I would assume there would be little or no opportunity in these cases.

[fol. 96] Q. Now, you understand, do you not, that a storekeeper does not consume the milk that is sold to him but in turn he sells it?

A. I assume that is the principal reason he buys it.

Q. And that his sales are dictated by the demands of his customers?

A. Well, this would not deny that the storekeeper in turn could not influence the demand of his customers. This is a little out of context, but are you referring to the kind of situation we have in the book called *Booking Backward*, perhaps?

Q. That is the dullest book that ever was written. When you drafted Paragraph H did you or did you not know that the route is not determined by the driver or the customer on the route is not determined by the driver?

A. Well, I do not know that anybody told me that, but I think—I certainly assumed it, that the driver would not determine what particular places he would stop all by himself.

Q. Well, did you think the driver had anything to do with the selection of his customers or the addition of customers to his route?

A. Well, I would assume not directly; that is, I should [fol. 97] think he might have something to do with it in this way, that if he saw signs that a new grocery store, shall we say, was going to go up on some certain corner, he will probably call it to the attention of the proper parties so that they in turn might hustle out and solicit this new storekeeper. I think he might in a situation somewhat that way.

These drivers are businessmen, after all. They are not just robots or automatons; they are anxious to increase their personal income, and the best way to do that is through increasing volume.

Q. They are also union men, aren't they?

(Discussion had off the record.)

Mr. Ball: Leave it this way. I will go over my notes tonight. I think I will have a few additional questions tomorrow, but I think we will save time if Mr. Stevens started the first thing in the morning. We do want to resume.

Mr. Jinkinson: Very well. Nine-thirty in the morning.

Mr. Ball: Fine.

(Whereupon the deposition in the above entitled cause was continued until the following day, Tuesday, April 15, 1958.)